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

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

RESERVATIONS: (202) 741–6008

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CFR PARTS AFFECTED IN THIS ISSUE

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

Rules and Regulations

Federal Register
Vol. 76, No. 64
Monday, April 4, 2011

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 91

[Docket No. APHIS–2009–0078]

RIN 0579–AD25

Removal of the List of Ports of Embarkation and Export Inspection Facilities From the Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the live animal export regulations by removing the list of designated ports of embarkation and their associated export inspection facilities. As a result of this rulemaking, those ports and facilities will be listed on the Internet rather than in the regulations, thus enabling us to amend the list, when necessary, in a timelier manner than we have been able to heretofore and allowing us greater flexibility in regulating animal exports.

DATES: *Effective Date:* May 4, 2011.

FOR FURTHER INFORMATION CONTACT: Dr. Courtney Bronner Williams, Senior Staff Veterinarian, Technical Trade Services, National Center for Import and Export, VS, APHIS, 4700 River Road, Unit 39, Riverdale, MD 20737–1231; (301) 734–8364.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 91, "Inspection and Handling of Livestock for Exportation" (referred to below as the regulations), prescribe conditions for exporting animals from the United States. The regulations state, among other things, that all animals, except animals exported by land to Canada or Mexico, must be exported through designated ports of embarkation, unless the exporter can show that the animals would suffer undue hardship if they were required to be moved to a designated port of embarkation.

On September 17, 2010, we published in the **Federal Register** (75 FR 56914–56916, Docket No. APHIS–2009–0078) a proposal[1] to amend the live animal export regulations by removing the list of designated ports of embarkation and their associated export inspection facilities contained in § 91.14(a). We proposed to replace the list with text referring the reader to an Animal and Plant Health Inspection Service (APHIS) Veterinary Services area office for obtaining the list or the APHIS Web site for viewing it. Our proposal was intended to enable us to amend the list, when necessary, in a timelier manner than we previously had been able to and allow us greater flexibility in regulating animal exports. Because the designated ports of embarkation and associated export inspection facilities had been listed in the regulations, the list could only be amended to add or remove ports or export inspection facilities or to update contact information by means of rulemaking.

We also proposed to make some changes to the regulations in § 91.14(d) pertaining to approval and denial, revocation, or suspension of approval of export inspection facilities in order to clarify the regulations and ensure that standards are being maintained at ports and facilities covered under these regulations. Specifically, we proposed to add a requirement to § 91.14(d) that designated ports of embarkation and export facilities be reevaluated annually for compliance with the regulations by means of an APHIS inspection. We also proposed to simplify § 91.14(d) by eliminating references therein to suspension of approval, since the paragraph did not draw a clear distinction between suspension and revocation, and for enforcement purposes, the two were essentially the same. Finally, we proposed to add to § 91.14(d) procedures for reinstatement following revocation of approval, since the existing regulations did not address the subject directly.

We solicited comments concerning our proposal for 60 days ending November 16, 2010. We received one comment by that date, from a livestock exporter. The commenter supported the proposed rule.

Though we are not making any changes to this final rule in response to the comment, we are making one editorial revision. In the September 2010 proposed rule, § 91.14(a) indicated that the determination that an export inspection facility met our requirements would be made by an APHIS veterinarian. To make paragraph (a) consistent with the rest of § 91.14, we are amending that paragraph to indicate that such determinations will be made by the Administrator.

Therefore, for the reasons given in the proposed rule, we are adopting the proposed rule as a final rule, with the change discussed in this document.

Executive Order 12866 and Regulatory Flexibility Act

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

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities. The analysis is summarized below. Copies of the full analysis are available on the Regulations.gov Web site (see footnote 1 in this document for a link to Regulations.gov) or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

This final rule amends the live animal export regulations by removing the list of designated ports of embarkation and their associated export inspection facilities. As a result of this rulemaking, those ports and facilities will henceforth be listed on the Internet rather than in the regulations, allowing us to amend the list, when necessary, in a timelier manner than we were able to previously.

Those entities most likely to be economically affected by the rule are exporters of live animals and domestic livestock producers. These entities either sell goods on their own account (import/export merchants) or arrange for the sale of goods owned by others (import/export agents and brokers). Affected entities may include beef cattle ranching and farming operations, dairy cattle and milk production operations, hog and pig farming operations, sheep

[1] To view the proposed rule and the comments we received, go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2009-0078.*

and goat farming operations, and cattle feedlots.

The Small Business Administration has established guidelines for determining which businesses are to be considered small. Based on the most recent data we have regarding annual receipts, it is likely that most of the entities that will be affected by this rule are small.

However, this rulemaking only amends APHIS' administrative process for changing the list of designated embarkation ports and associated export inspection facilities. This action does not make any changes in the status of any designated embarkation port or associated export inspection facility, nor does it alter the technical criteria by which designated embarkation ports and associated export inspection facilities are added to or removed from this list. We expect that this final rule will have little effect on U.S. entities other than benefits they may derive from timelier changes to the list of designated ports of embarkation and associated export inspection facilities.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This final rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 91

Animal diseases, Animal welfare, Exports, Livestock, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are amending 9 CFR part 91 as follows:

PART 91—INSPECTION AND HANDLING OF LIVESTOCK FOR EXPORTATION

■ 1. The authority citation for part 91 continues to read as follows:

Authority: 7 U.S.C. 8301–8317; 19 U.S.C. 1644a(c); 21 U.S.C. 136, 136a, and 618; 46 U.S.C. 3901 and 3902; 7 CFR 2.22, 2.80, and 371.4.

■ 2. Section 91.14 is amended by revising paragraphs (a), (b), and (d) to read as follows:

§ 91.14 Ports of embarkation and export inspection facilities.

(a) All ports that have export inspection facilities which the Administrator has determined satisfy the requirements of paragraph (c) of this section are hereby designated as ports of embarkation. A list of designated ports of embarkation can be viewed on the Internet at *http://www.aphis.usda.gov/regulations/vs/iregs/animals/* or obtained from a Veterinary Services area office. Information on area offices is available at *http://www.aphis.usda.gov/animal_health/area_offices/.* All animals, except animals being exported by land to Mexico or Canada, shall be exported through said ports or through ports designated in special cases under paragraph (b) of this section.

(b) In special cases, other ports may be designated as ports of embarkation by the Administrator, with the concurrence of the Commissioner of the Bureau of Customs and Border Protection, when the exporter can show to the satisfaction of the Administrator that the animals to be exported would suffer undue hardship if they are required to be moved to a port listed as a designated port of embarkation in accordance with paragraph (a) of this section. Ports shall be designated in special cases as ports of embarkation only if the inspection facilities are approved as meeting the requirements of paragraph (c) of this section.

* * * * *

(d) *Approval and denial or revocation of approval.* Approval of each export inspection facility for designation under paragraph (a) of this section, and in special cases under paragraph (b) of this section, shall be obtained from the Administrator. Approval of an export inspection facility under paragraph (a) or (b) of this section will be denied or revoked for failure to meet the standards in paragraph (c) of this section. Designated ports of embarkation and export facilities shall be reevaluated annually, by means of an APHIS site inspection, for continued compliance with the standards contained in paragraph (c) of this section. If the port or facility fails to pass the annual inspection, its designation will be revoked, and it will be removed from the list of designated ports and facilities. A written notice of any proposed denial or revocation shall be given to the operator of the facility, and he or she will be given an opportunity to present his or her views thereon. Such notice shall list in detail the deficiencies concerned. After remedying the deficiencies, an operator may request another inspection. Approval of a port of embarkation in connection with the designation of an export inspection facility in special cases shall be limited to the special case for which the designation was made.

* * * * *

■ 3. In § 91.15, paragraph (a) is revised to read as follows:

§ 91.15 Inspection of animals for export.

(a) All animals offered for exportation to any foreign country, except by land to Mexico or Canada, shall be inspected within 24 hours of embarkation by an APHIS veterinarian at an export inspection facility at a port listed as a designated port of embarkation in accordance with § 91.14(a), or at a port or inspection facility designated by the Administrator in a special case under § 91.14(b).

* * * * *

Done in Washington, DC, this 29th day of March 2011.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–7897 Filed 4–1–11; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

9 CFR Part 201

RIN 0580–AB10

Required Scale Tests

AGENCY: Grain Inspection, Packers and Stockyards Administration.

ACTION: Correcting amendments.

SUMMARY: The Grain Inspection, Packers and Stockyards Administration published a document in the **Federal Register** on January 20, 2011 (76 FR 3485), defining required scale tests. That document incorrectly defined limited seasonal basis in § 201.72(a) (9 CFR 201.72(a)). This document corrects the final regulation by revising this section.

DATES: Effective on April 4, 2011.

FOR FURTHER INFORMATION CONTACT: S. Brett Offutt, Director, Policy and Litigation Division, P&SP, GIPSA, 1400 Independence Ave., SW., Washington, DC 20250, (202) 720–7363, *s.brett.offutt@usda.gov.*

SUPPLEMENTARY INFORMATION:

List of Subjects in 9 CFR Part 201

Reporting and recordkeeping requirements, Measurement standards, Trade practices.

Accordingly, 9 CFR part 201 is corrected by making the following correcting amendment:

PART 201—REGULATIONS UNDER THE PACKERS AND STOCKYARDS ACT

■ 1. The authority citation for part 201 continues to read as follows:

Authority: 7 U.S.C. 181–229c.

■ 2. In § 201.72, revise the last sentence of paragraph (a) to read as follows:

§ 201.72 Scales; testing of.

(a) * * * *Except that* if scales are used on a limited seasonal basis (during any continuous 6-month period) for purposes of purchase, sale, acquisition, payment or settlement, the stockyard owner, swine contractor, market agency, dealer, live poultry dealer, or packer using such scales may use the scales within a 6-month period following each test.

* * * * *

Alan R. Christian,

Acting Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 2011–7831 Filed 4–1–11; 8:45 am]

BILLING CODE 3410–KD–P

FEDERAL RESERVE SYSTEM

12 CFR Part 213

[Regulation M; Docket No. R–1400]

RIN No. 7100–AD60

Consumer Leasing

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: Effective July 21, 2011, the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) amends the Consumer Leasing Act (CLA) by increasing the threshold for exempt consumer leases from $25,000 to $50,000. In addition, the Dodd-Frank Act provides that, on or after December 31, 2011, this threshold must be adjusted annually by any annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers. Accordingly, the Board is making corresponding amendments to Regulation M, which implements the CLA, and to the accompanying staff commentary. Because the Dodd-Frank Act also increases the Truth in Lending Act's threshold for exempt consumer credit transactions from $25,000 to $50,000, the Board is making similar amendments to Regulation Z elsewhere in today's **Federal Register**.

DATES: Consistent with Sections 1062 and 1100H of the Dodd-Frank Act, this final rule is effective on the transfer date designated by the Secretary of the Treasury, which is July 21, 2011.

FOR FURTHER INFORMATION CONTACT: Stephen Shin, Attorney, or Benjamin K. Olson, Counsel, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667 or 452–2412; for users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION:

I. Background

The Consumer Leasing Act

The Consumer Leasing Act (CLA), 15 U.S.C. 1667–1667e, was enacted in 1976 as an amendment to the Truth in Lending Act (TILA), 15 U.S.C. 1601 *et seq.* The purpose of the CLA is to ensure meaningful and accurate disclosure of the terms of personal property leases for personal, family, or household use. The CLA is implemented by the Board's Regulation M (12 CFR part 213).

The CLA and Regulation M require lessors to provide consumers with uniform cost and other disclosures about consumer lease transactions. The statute and the regulation generally apply to consumer leases for the use of personal property in which the contractual obligation has a term of more than four months. An automobile lease is the most common type of consumer lease covered by the CLA and Regulation M. Currently, however, if the lessee's total contractual obligation under the lease exceeds $25,000, the CLA and Regulation M do not apply. *See* 15 U.S.C. 1667(1); 12 CFR 213.2(e).[1]

The Dodd-Frank Wall Street Reform and Consumer Protection Act

This final rule implements Section 1100E of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act), which was signed into law on July 21, 2010. Public Law 111–203 § 1100E, 124 Stat. 1376 (2010). The Dodd-Frank Act raises the CLA's $25,000 exemption threshold to $50,000. In addition, the Dodd-Frank Act requires that, on or after December 31, 2011, the threshold shall be adjusted annually for inflation by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W), as published by the Bureau of Labor Statistics. Therefore, from July 21, 2011 to December 31, 2011, the threshold dollar amount will be $50,000. Effective January 1, 2012, the $50,000 threshold will be adjusted annually based on any annual percentage increase in the CPI–W.

In December 2010, the Board proposed to amend § 213.2(e), the accompanying commentary, and the commentary to § 213.7(a) for consistency with the amendments to the CLA's exemption threshold. *See* 75 FR 78632 (Dec. 16, 2010) (December 2010 Proposed Regulation M Rule). In addition, because the Dodd-Frank Act makes similar amendments to TILA's exemption threshold for consumer credit transactions, the Board simultaneously proposed to amend Regulation Z, which implements the provisions of TILA that do not address consumer leases. *See* 75 FR 78636 (Dec. 16, 2010) (December 2010 Regulation Z Proposed Rule).

The Board received only two comments on the December 2010 Regulation M Proposed Rule. As discussed below, the Board is generally adopting the rule as proposed. Elsewhere in today's **Federal Register**, the Board is also adopting a final rule amending Regulation Z in order to implement the amendments to TILA's exemption threshold for consumer credit transactions.

II. Summary of Final Rule

Revisions to § 213.2

Consistent with the Dodd-Frank Act, the Board's final rule revises § 213.2 and the accompanying staff commentary to provide that, effective July 21, 2011, a consumer lease is exempt from the requirements of Regulation M if the consumer's total contractual obligation

[1] Specifically, the CLA currently defines a consumer lease as "a contract in the form of a lease or bailment for the use of personal property by a natural person for a period of time exceeding four months, and *for a total contractual obligation not exceeding $25,000,* primarily for personal, family, or household purposes, whether or not the lessee has the option to purchase or otherwise become the owner of the property at expiration of the lease. * * *" 15 U.S.C. 1667(1) (emphasis added). Regulation M implements this definition in § 213.2(e).

under the lease exceeds $50,000 when the lease is consummated. This final rule further provides that, beginning on January 1, 2012, the $50,000 threshold will be adjusted annually by any annual percentage increase in the CPI–W.

Effective Date

Section 1100H of the Dodd-Frank Act provides that Section 1100E will become effective on the designated transfer date, as defined by Section 1062 of that Act. Section 1062 of the Dodd-Frank Act requires, in relevant part, the Secretary of the Treasury to designate a single calendar date for the transfer of certain functions from other agencies to the Bureau of Consumer Financial Protection. Pursuant to Section 1062(a) of the Dodd-Frank Act, the Secretary of the Treasury has determined that the designated transfer date shall be July 21, 2011. *See* 75 FR 57252 (Sept. 20, 2010). Accordingly, because Section 1100E will become effective on July 21, 2011, this final rule will be effective on that date. However, if the Secretary of the Treasury designates a later transfer date pursuant to Section 1062, this final rule will instead be effective on that date.

One industry commenter requested that the Board delay the statutory effective date by one year (*i.e.,* until July 21, 2012). This commenter asserted that—in light of the extensive regulatory changes required by the Dodd-Frank Act and other statutes—it would be burdensome for small institutions to comply with Regulation M for consumer leases of $50,000 or less by July 21, 2011. However, the Board understands that, as a general matter, institutions that engage in consumer leasing already have the systems in place to comply with Regulation M. Thus, it should not be unduly burdensome for these institutions to comply with Regulation M with respect to a larger population of leases. Accordingly, in these circumstances, it would not be appropriate to deviate from the effective date established by Congress.

III. Statutory Authority

The CLA authorizes the Board to prescribe regulations to update and clarify the requirements and definitions applicable to lease disclosures and contracts, and any other issues specifically related to consumer leasing, to the extent that the Board determines such action to be necessary to carry out the CLA, to prevent circumvention, or to facilitate compliance. 15 U.S.C. 1667f(a). The CLA also provides that any regulations prescribed by the Board may contain classifications and differentiations, and may provide for adjustments and exceptions for any class of transactions, as the Board considers appropriate. *Id.* In addition, the CLA is a part of TILA, which grants similar authority to the Board. *See* 15 U.S.C. 1604(a) and (f). For the reasons discussed below, the Board believes it is necessary and appropriate to implement Section 1100E of the Dodd-Frank Act by revising Regulation M to effectuate the purposes of the CLA and TILA, to prevent circumvention, and to facilitate compliance.

IV. Section-by-Section Analysis

Section 213.2—Definitions

2(e) Consumer Lease

Section 213.2(e) implements the CLA's definition of consumer lease. Currently, § 213(e)(1) defines "consumer lease" as "a contract in the form of a bailment or lease for the use of personal property by a natural person primarily for personal, family, or household purposes, for a period exceeding four months and for a total contractual obligation not exceeding $25,000, whether or not the lessee has the option to purchase or otherwise become the owner of the property at the expiration of the lease." As discussed in existing comment 2(e)–3, the total contractual obligation under a lease includes the total of payments as well as non-refundable amounts the lessee is contractually obligated to pay to the lessor. However, comment 2(e)–3 also clarifies that residual value amounts, purchase-option prices, and amounts collected by the lessor but paid to a third party (such as taxes, licenses, and registration fees) are excluded from the total contractual amount.

In addition to increasing the threshold for an exemption from $25,000 to $50,000 effective July 21, 2011, Section 1100E of the Dodd-Frank Act provides that, beginning in 2012, the $50,000 threshold will be further increased annually to reflect any increases in the CPI–W. Accordingly, whether the total contractual obligation under a consumer lease is sufficient to exempt that lease from the CLA will depend on the threshold amount in effect when the lease is consummated. For that reason, the Board proposed to amend § 213.2(e)(1) to provide that a consumer lease is exempt if the total contractual obligation exceeds "the applicable threshold amount," which would be listed in the official staff commentary. The Board further proposed to amend § 213.2(e)(1) to provide that the threshold amount will be adjusted annually to reflect increases in the CPI–W (as applicable). The Board did not receive any comment on these revisions, which are adopted as proposed.

The Board also proposed to adopt a new comment 2(e)–9 in order to clarify the method for determining the applicable threshold amount with respect to a particular lease. Specifically, this comment clarified that a consumer lease is exempt from the requirements of Regulation M if the total contractual obligation exceeds the threshold amount in effect at the time of consummation.

Proposed comment 2(e)–9 further clarified that the threshold amount in effect during a particular period of time is the amount stated in the comment for that period. The proposed comment also noted that the threshold amount would be adjusted effective January 1 of each year by any annual percentage increase in the CPI–W that was in effect on the preceding June 1. Once the annual percentage increase in the CPI–W in effect on June 1 becomes available, this comment will be amended to provide the threshold amount for the upcoming year. The Board noted that this approach is consistent with that adopted by the Board in other regulations that provide for annual adjustments based on a consumer price index. *See, e.g.,* 12 CFR 226.32(a)(1)(ii) and its accompanying commentary. The Board believes this approach will facilitate compliance by permitting the publication of an increased threshold amount sufficiently in advance of the January 1 effective date.

In addition, proposed comment 2(e)–9 clarified that any increase in the threshold amount would be rounded to the nearest $100 increment. For example, if the annual percentage increase in the CPI–W would result in a $950 increase in the threshold amount, the threshold amount will be increased by $1,000. However, if the annual percentage increase in the CPI–W would result in a $949 increase in the threshold amount, the threshold amount will be increased by $900. This approach is consistent with Section 1100E(b) of the Dodd-Frank Act, which provides that annual CPI–W adjustments should be "rounded to the nearest multiple of $100, or $1,000, as applicable." The Board believes that Congress did not intend for an annual CPI–W adjustment to be rounded to the nearest $100 in some circumstances but to the nearest $1,000 in others, which could lead to anomalous results. Because $1,000 is itself a multiple of $100, the Board believes that this commentary clarifies the statutory language in a manner consistent with the intent of Section 1100E.

Finally, the proposed comment clarified that, if a consumer lease is exempt from the requirements of

Regulation M because the total contractual obligation exceeds the threshold amount in effect at the time of consummation, the lease remains exempt regardless of a subsequent increase in the threshold amount. Thus, for example, if a lease with a total contractual obligation of $30,000 was consummated in June 2011, that lease is exempt based on the $25,000 threshold in effect at that time and would remain exempt after July 21, 2011, notwithstanding the increase in the threshold to $50,000. Similarly, if a lease with a total contractual obligation of $55,000 is consummated in August 2011, that lease would be exempt based on the $50,000 threshold in effect at that time and would remain exempt even if the threshold were subsequently increased to $56,000 based on an increase in the CPI–W. This approach is consistent with § 213.3(e), which provides that events that occur after consummation of a consumer lease generally do not require the lessor to provide additional Regulation M disclosures. *See* comment 3(e)–2.

The Board received only one comment regarding this proposed guidance. A Member of Congress suggested that consumer leases with total contractual obligations above the applicable threshold amount at consummation should not be permanently exempt from Regulation M. Instead, this commenter suggested that, if, at any point during the term of the lease, the total amount of the consumer's remaining obligation is less than the applicable threshold amount, the lessor should begin to comply with the regulation. However, the provisions of the CLA and Regulation M generally govern disclosures made at or prior to consummation of a lease. Thus, it does not appear that requiring lessors to comply with Regulation M after consummation would provide benefits to consumers that would outweigh the burden on lessors of continually monitoring each lease to determine when the remaining obligation falls below the applicable threshold amount. Accordingly, comment 2(e)–9 is adopted as proposed.

Section 213.7—Advertising

7(a) General Rule

Section 213.7 imposes certain requirements on advertisements for consumer leases. In order to provide guidance regarding the interaction between § 213.7 and the definition of "consumer lease" in § 213.2(e), the Board proposed to adopt a new comment 7(a)–3. This comment clarified that § 213.7 applies to advertisements for consumer leases, as defined in § 213.2(e). As discussed above, a lease is exempt from the requirements of Regulation M (including § 213.7) if the total contractual obligation exceeds the threshold amount in effect at the time of consummation. Accordingly, proposed comment 7(a)–3 clarified that § 213.7 does not apply to an advertisement for a specific consumer lease if the total contractual obligation for that lease exceeds the threshold amount in effect when the advertisement is made. If a lessor promotes multiple consumer leases in a single advertisement, the entire advertisement must comply with § 213.7 unless all of the advertised leases are exempt under § 213.2(e). The comment also provided illustrative examples. The Board did not receive any comment on this guidance, which is adopted as proposed.

V. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) requires an agency to perform an initial and a final regulatory flexibility analysis on the impact a rule is expected to have on small entities. However, under section 605(b) of the RFA, 5 U.S.C. 605(b), the regulatory flexibility analysis otherwise required under section 604 of the RFA is not required if an agency certifies, along with a statement providing the factual basis for such certification, that the rule will not have a significant economic impact on a substantial number of small entities. Based on its initial and final analyses and for the reasons stated below, the Board believes that this final rule will not have a significant economic impact on a substantial number of small entities.

1. *Statement of the need for, and objectives of, the final rule.* The final rule implements Section 1100E of the Dodd-Frank Act, which increases the total contractual obligation necessary to exempt a consumer lease from the Consumer Leasing Act (CLA) from more than $25,000 to more than $50,000, effective July 21, 2010. Section 1100E also provides that, beginning in 2012, this amount shall be adjusted annually to reflect any annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W). The supplementary information above describes in detail the reasons, objectives, and legal basis for the final rule.

2. *Summary of the significant issues raised by public comment on Board's initial analysis, the Board's assessment of such issues, and a statement of any changes made as a result of such comments.* An industry group representing credit unions requested that, in order to reduce regulatory burden, the Board provide additional guidance regarding the types of records that institutions are required to retain in order to demonstrate compliance with Regulation M. Section 213.8 states that lessors must retain "evidence of compliance with the requirements imposed by [Regulation M], other than the advertising requirements under section 213.7, for a period of not less than two years after the disclosures are required to be made or an action is required to be taken." Comment 8–1 clarifies that these records may be retained "in paper form, on microfilm, microfiche, or computer, or by any other method designed to reproduce records accurately" and that "[t]he lessor need retain only enough information to reconstruct the required disclosures or other records."

Because the current regulation and commentary provide lessors with considerable flexibility regarding the retention of records, the Board is concerned that adopting a more specific set of requirements (such as a list of documents that lessors must retain) could increase regulatory burden, rather than reducing it. Furthermore, because the Board did not propose any amendments to the record retention requirements in § 213.8, any revisions to those requirements would not have the benefit of input from the public, including small institutions. Although the commenter suggested that the Board work with a focus group of institutions to revise the record retention requirements, it would not be possible for the Board to do so and still issue a final rule sufficiently in advance of the July 21, 2010 statutory effective date. Accordingly, the final rule does not alter the requirements of § 213.8.

3. *Small entities affected by the final rule.* Currently, Regulation M applies to any person who regularly leases, offers to lease, or arranges for the lease of personal property primarily for personal, family, or household purposes, for a period exceeding four months, and for a total contractual obligation of $25,000 or less. 12 CFR 213.2(e) and (h). Consistent with Section 1100E of the Dodd-Frank Act, the final rule applies Regulation M, beginning on July 21, 2011, to any person who provides consumer leases for a total contractual obligation of $50,000 or less, adjusted annually to reflect increases in the CPI–W.

Based on 2010 call report data, there are no banks with assets of $175 million or less that engage in consumer leasing. There are, however, 306 thrifts and 92 credit unions with assets of $175 million or less that engage in consumer

leasing. In addition, the Board's 2005 Finance Company Survey indicates that fewer than ten small finance companies engage in consumer leasing. Commenters did not provide any information on the number of small entities affected by the proposed rule. Nevertheless, the Board acknowledges that the total number of small entities likely to be affected by the final rule is unknown, in part because it is unclear how many of the small entities currently engaged in consumer leasing offer leases with total contractual obligations of more than $25,000 but not more than $50,000.

4. *Recordkeeping, reporting, and compliance requirements.* The final rule does not impose any new reporting requirements. However, the final rule does impose new recordkeeping requirements for small entities that offer consumer leases with total contractual obligations of more than $25,000 but not more than $50,000. As noted above, § 213.8 requires lessors to retain evidence of compliance with its provisions (except the advertising requirements in § 213.7) for a period of not less than two years after the date the disclosures are required to be made or an action is required to be taken. Thus, beginning on July 21, 2011, the final rule requires lessors to retain records for new consumer leases with total contractual obligations not exceeding $50,000, adjusted annually to reflect increases in the CPI–W.

The final rule also imposes new compliance requirements for consumer leases with total contractual obligations of more than $25,000 but not more than $50,000. Specifically, for consumer leases subject to Regulation M, the lessor must provide certain disclosures regarding payments, liability, and other terms of the lease prior to consummation (§§ 213.3 and 213.4) and when the availability of consumer leases on particular terms is advertised (§ 213.7).

The Board understands that small entities that offer consumer leases generally have systems in place to provide the disclosures required by Regulation M and retain records of those disclosures, even if some of their leases are currently exempt. Thus, while the precise costs to small entities to provide disclosures and retain records for a larger population of leases are difficult to predict, the Board does not believe that the final rule would have a significant economic impact on a substantial number of small entities. Except as already discussed above, the Board did not receive any comments to the contrary.

5. *Significant alternatives to the final rule.* The final rule implements Section 1100E of the Dodd-Frank Act, which goes into effect on July 21, 2011. As discussed in the supplementary information, the final rule clarifies that, if a consumer lease with a total contractual obligation exceeding $25,000 is consummated prior to July 21, 2011, that lease remains exempt, notwithstanding subsequent increases in the threshold amount. Except as already discussed above, the Board did not receive any comments suggesting alternatives that would minimize the impact of the rule on small entities and would be consistent with Section 1100E of the Dodd-Frank Act.

VI. Paperwork Reduction Act Analysis

In accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3506; 5 CFR part 1320 Appendix A.1), the Board reviewed the final rule under the authority delegated to the Board by the Office of Management and Budget (OMB). In addition, as permitted by the PRA, the Board is extending for three years the current recordkeeping and disclosure requirements in connection with Regulation M. The collection of information that is required by this rule is found in 12 CFR Part 213. The Board may not conduct or sponsor, and an organization is not required to respond to, this information collection unless it displays a currently valid OMB control number. The OMB control number is 7100–0202.

This information collection is required to provide benefits for consumers and is mandatory (15 U.S.C. 1601 *et seq.*). The respondents/recordkeepers are lessors subject to Regulation M, including for-profit financial institutions and small businesses. Sections 105(a) and 187 of TILA (15 U.S.C. 1604(a) and 1667f) authorize the Board to issue regulations to carry out the provisions of the CLA. The CLA and Regulation M are intended to provide consumers with meaningful disclosures about the costs and terms of leases for personal property. The disclosures enable consumers to compare the terms for a particular lease with those for other leases and, when appropriate, to compare lease terms with those for credit transactions. The act and regulation also contain rules about advertising consumer leases. The information collection pursuant to Regulation M is triggered by specific events. All disclosures must be provided to the lessee prior to the consummation of the lease and when the availability of consumer leases on particular terms is advertised. This information collection is mandatory.

Since the Board does not collect any information, no issue of confidentiality normally arises. However, in the event the Board were to retain records during the course of an examination, the information may be kept confidential pursuant to section (b)(8) of the Freedom of Information Act (5 U.S.C. 522(b)(8)).

Regulation M applies to all types of lessors of personal property. The Board accounts for the paperwork burden associated with the regulation only for Board-supervised institutions. Appendix B of Regulation M defines the Board-supervised institutions as: State member banks, branches and agencies of foreign banks (other than federal branches, federal agencies, and insured state branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act. Other federal agencies account for the paperwork burden on other lessors for which they have administrative enforcement authority.

To ease the compliance cost (particularly for small entities) model forms are appended to the regulation. Lessors are required to retain evidence of compliance for 24 months, but the regulation does not specify types of records that must be retained.

The current annual burden to comply with the provisions of Regulation M is estimated to be 2 hours for each of the 4 State member banks [2] that engage in consumer leasing. Thus, the current total annual burden for all respondents is 8 hours.

The Board estimates that the final rule will impose a one-time increase in the total annual burden under Regulation M. The 4 respondents will take, on average, 40 hours (one business week) to update their systems to comply with the requirements of the final rule. This one-time revision will increase the total burden for all 4 respondents by 160 hours. On a continuing basis, the Board estimates that the 4 respondents will each take, on average, an additional 8 hours (one business day) annually to comply with the requirements, which will increase the ongoing total annual burden for all 4 respondents by 32 hours. Therefore, the total annual burden for all respondents is estimated to increase by 192 hours (from 8 to 200 hours) during the first year after this rule takes effect. Thereafter, the

[2] Federal Financial Institutions Examination Council Consolidated Reports of Condition and Income (Call Reports) (FFIEC 031 & 041; OMB No. 7100–0036), Schedule RC–C, data item 10.a—Leases to individuals for household, family, and other personal expenditures.

estimated ongoing total annual burden will be 40 hours.

The total burden increase represents averages for all respondents regulated by the Board. The Board expects that the amount of time required to implement each of the changes for a given financial institution or entity may vary based on the size and complexity of the respondent. Furthermore, the Board understands that many lessors voluntarily comply with Regulation M for leases that are currently exempt. Thus, the estimated burden increase likely overstates the actual increase in burden for those lessors.

The other Federal financial agencies are responsible for estimating and reporting to OMB the total paperwork burden for the institutions for which they have administrative enforcement authority.[3] They may, but are not required to, use the Board's burden estimates. There are approximately 16,200 depository institutions of which the Board estimates that 58 depository institutions[4] will be affected by this collection of information and considered respondents for purposes of the PRA. Using the Board's method, the total estimated annual burden for all financial institutions subject to Regulation M is currently approximately 116 hours. The final rule will impose a one-time increase in the estimated annual burden for the estimated 58 institutions thought to engage in consumer leasing by a total of 2,320 hours. On a continuing basis, the final rule will impose an increase in the estimated annual burden by a total of 464 hours. Thus, the total annual burden for the 58 institutions is estimated to increase by 2,784 hours (from 116 to 2,900 hours) during the first year after this rule takes effect. Thereafter, the estimated ongoing total annual burden will be 580 hours. The above estimates represent an average across all respondents and reflect variations between institutions based on their size, complexity, and practices. In addition, other institutions covered by Regulation M, such as retailers and finance companies potentially are affected by this collection of information, and thus are also respondents for purposes of the PRA. As noted above, the estimated burden increase likely overstates the actual increase in burden because many lessors voluntarily comply with Regulation M for exempt leases.

The Board did not receive any comments specifically addressing the foregoing estimates, which were provided in the December 2010 Regulation M Proposed Rule. The Board did receive one comment generally addressing the burdens associated with retaining records pursuant to § 213.8, which is discussed above in the Board's final RFA analysis.

The Board has a continuing interest in the public's opinion on the collection of information. Comments on the collection of information should be sent to Cynthia Ayouch, Acting Federal Reserve Clearance Officer, Division of Research and Statistics, Mail Stop 95–A, Board of Governors of the Federal Reserve System, Washington, DC 20551, with copies of such comments sent to the Office of Management and Budget, Paperwork Reduction Project (7100–0202), Washington, DC 20503.

List of Subjects in 12 CFR Part 213

Advertising, Federal Reserve System, Reporting and recordkeeping requirements, Truth in lending.

Text of Final Revisions

For the reasons set forth in the preamble, the Board amends Regulation M, 12 CFR part 213, as set forth below:

PART 213—CONSUMER LEASING (REGULATION M)

■ 1. The authority citation for part 213 is amended to read as follows:

Authority: 15 U.S.C. 1604 and 1667f; Pub. L. 111–203 § 1100E, 124 Stat. 1376.

■ 2. Section 213.2(e)(1) is revised to read as follows:

§ 213.2 Definitions.

* * * * *

(e)(1) *Consumer lease* means a contract in the form of a bailment or lease for the use of personal property by a natural person primarily for personal, family, or household purposes, for a period exceeding four months and for a total contractual obligation not exceeding the applicable threshold amount, whether or not the lessee has the option to purchase or otherwise become the owner of the property at the expiration of the lease. The threshold amount is adjusted annually to reflect increases in the Consumer Price Index for Urban Wage Earners and Clerical Workers, as applicable. See the official staff commentary to this paragraph (e) for the threshold amount applicable to a specific consumer lease. Unless the context indicates otherwise, in this part "lease" means "consumer lease."

* * * * *

■ 3. In Supplement I to Part 213:

■ A. Under *Section 213.2—Definitions,* under *2(e) Consumer Lease,* paragraph 9. is added; and

■ B. Under *Section 213.7—Advertising,* under *7(a) General Rule,* paragraph 3. is added to read as follows:

Supplement I to Part 213—Official Staff Commentary to Regulation M

* * * * *

Section 213.2—Definitions

* * * * *

2(e) Consumer Lease.

* * * * *

9. *Threshold amount.* A consumer lease is exempt from the requirements of this Part if the total contractual obligation exceeds the threshold amount in effect at the time of consummation. The threshold amount in effect during a particular time period is the amount stated below for that period. The threshold amount is adjusted effective January 1 of each year by any annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W) that was in effect on the preceding June 1. This comment will be amended to provide the threshold amount for the upcoming year after the annual percentage change in the CPI–W that was in effect on June 1 becomes available. Any increase in the threshold amount will be rounded to the nearest $100 increment. For example, if the annual percentage increase in the CPI–W would result in a $950 increase in the threshold amount, the threshold amount will be increased by $1,000. However, if the annual percentage increase in the CPI–W would result in a $949 increase in the threshold amount, the threshold amount will be increased by $900. If a consumer lease is exempt from the requirements of this Part because the total contractual obligation exceeds the threshold amount in effect at the time of consummation, the lease remains exempt regardless of a subsequent increase in the threshold amount.

i. Prior to July 21, 2011, the threshold amount is $25,000.

ii. From July 21, 2011 through December 31, 2011, the threshold amount is $50,000.

* * * * *

Section 213.7—Advertising

7(a) General Rule.

* * * * *

[3] Appendix B—Federal Enforcement Agencies—of Regulation M lists those federal agencies that enforce the regulation for particular classes of business. The Federal financial agencies other than the Federal Reserve include: The Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC), the Office of Thrift Supervision (OTS), and the National Credit Union Administration (NCUA). The Federal non-financial agencies include: The Department of Transportation, the Grain Inspection, Packers, and Stockyards Administration (Department of Agriculture), the Farm Credit Administration, and the Federal Trade Commission.

[4] Estimate is based on September 30, 2010, consumer lease data filed by depository institutions in their reports of condition and income: The commercial bank Call Report; (FFIEC 031 & 041) (Federal Reserve OMB No. 7100–0036), (OCC OMB No. 1557–0081), and (FDIC OMB No. 3064–0052); the thrift institution Thrift Financial Report (TFR; form 1313) (OTS OMB No. 1500–0023); and the credit union NCUA Call Reports (form 5300) (NCUA OMB No. 3133–0004).

3. *Total contractual obligation of advertised lease.* Section 213.7 applies to advertisements for consumer leases, as defined in § 213.2(e). Under § 213.2(e), a consumer lease is exempt from the requirements of this Part if the total contractual obligation exceeds the threshold amount in effect at the time of consummation. See comment 2(e)–9. Accordingly, § 213.7 does not apply to an advertisement for a specific consumer lease if the total contractual obligation for that lease exceeds the threshold amount in effect when the advertisement is made. If a lessor promotes multiple consumer leases in a single advertisement, the entire advertisement must comply with § 213.7 unless all of the advertised leases are exempt under § 213.2(e). For example:

A. Assume that, in an advertisement, a lessor states that certain terms apply to a consumer lease for a specific automobile. The total contractual obligation of the advertised lease exceeds the threshold amount in effect when the advertisement is made. Although the advertisement does not refer to any other lease, some or all of the advertised terms for the exempt lease also apply to other leases offered by the lessor with total contractual obligations that do not exceed the applicable threshold amount. The advertisement is not required to comply with § 213.7 because it refers only to an exempt lease.

B. Assume that, in an advertisement, a lessor states certain terms (such as the amount due at lease signing) that will apply to consumer leases for automobiles of a particular brand. However, the advertisement does not refer to a specific lease. The total contractual obligations of the leases for some of the automobiles will exceed the threshold amount in effect when the advertisement is made, but the total contractual obligations of the leases for other automobiles will not exceed the threshold. The entire advertisement must comply with § 213.7 because it refers to terms for consumer leases that are not exempt.

C. Assume that, in a single advertisement, a lessor states that certain terms apply to consumer leases for two different automobiles. The total contractual obligation of the lease for the first automobile exceeds the threshold amount in effect when the advertisement is made, but the total contractual obligation of the lease for the second automobile does not exceed the threshold. The entire advertisement must comply with § 213.7 because it refers to a consumer lease that is not exempt.

* * * * *

By order of the Board of Governors of the Federal Reserve System, March 24, 2011.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 2011–7377 Filed 4–1–11; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R–1399]

RIN No. 7100–AD59

Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: Effective July 21, 2011, the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) amends the Truth in Lending Act (TILA) by increasing the threshold for exempt consumer credit transactions from $25,000 to $50,000. In addition, the Dodd-Frank Act provides that, on or after December 31, 2011, this threshold must be adjusted annually by any annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers. Accordingly, the Board is making corresponding amendments to Regulation Z, which implements TILA, and to the accompanying staff commentary. Because the Dodd-Frank Act also increases the Consumer Leasing Act's threshold for exempt consumer leases from $25,000 to $50,000, the Board is making similar amendments to Regulation M elsewhere in today's **Federal Register**.

DATES: Consistent with Sections 1062 and 1100H of the Dodd-Frank Act, this final rule is effective on the transfer date designated by the Secretary of the Treasury, which is July 21, 2011.

FOR FURTHER INFORMATION CONTACT: Stephen Shin, Attorney, or Benjamin K. Olson, Counsel, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667 or 452–2412; for users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION:

I. Background

The Dodd-Frank Wall Street Reform and Consumer Protection Act

This final rule implements Section 1100E of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act), which was signed into law on July 21, 2010. Public Law 111–203 § 1100E, 124 Stat. 1376 (2010). Section 1100E amends Section 104(3) of the Truth in Lending Act (TILA) by establishing a new threshold for exempt consumer credit transactions. Currently, TILA Section 104(3) exempts "[c]redit transactions, other than those in which a security interest is or will be acquired in real property, or in personal property used or expected to be used as the principal dwelling of the consumer, and other than private education loans (as that term is defined in section 140(a)), in which the total amount financed exceeds $25,000." 15 U.S.C. 1603(3). Regulation Z implements this exemption in § 226.3(b).

Effective July 21, 2011, the Dodd-Frank Act raises TILA's $25,000 exemption threshold to $50,000. In addition, the Dodd-Frank Act provides that, on or after December 31, 2011, this threshold shall be adjusted annually for inflation by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W), as published by the Bureau of Labor Statistics. Therefore, from July 21, 2011 to December 31, 2011, the threshold dollar amount will be $50,000. Effective January 1, 2012, the $50,000 threshold will be adjusted annually based on any annual percentage increase in the CPI–W.

In December 2010, the Board proposed to amend § 226.3(b) and the accompanying commentary for consistency with the amendments made by the Dodd-Frank Act. *See* 75 FR 78636 (Dec. 16, 2010) (December 2010 Proposed Regulation Z Rule). In addition, because the Dodd-Frank Act makes similar amendments to the exemption threshold in the Consumer Leasing Act (which is part of TILA), the Board simultaneously proposed to amend Regulation M, which implements the Consumer Leasing Act (CLA). *See* 75 FR 78632 (Dec. 16, 2010) (December 2010 Proposed Regulation M Rule).

The Board received 10 comments on the December 2010 Regulation Z Proposed Rule. As discussed below, the Board is adopting the rule largely as proposed with some modifications to facilitate compliance. Elsewhere in today's **Federal Register,** the Board is also adopting a final rule amending Regulation M in order to implement the amendments to CLA's exemption threshold for consumer leases.

II. Summary of Final Rule

Revisions to § 226.3(b)

Consistent with the Dodd-Frank Act, the Board's final rule revises § 226.3(b) and the accompanying staff commentary to provide that, effective July 21, 2011, a consumer credit account is exempt from the requirements of Regulation Z if: (1) The initial extension of credit on the account exceeds $50,000; or (2) the creditor makes a firm commitment at

account opening to extend credit in excess of $50,000. This final rule further provides that, effective January 1, 2012, the $50,000 threshold will be adjusted annually by any annual percentage increase in the CPI–W.

The Board has also adopted a transition rule in § 226.3(b)(2) to reduce the compliance burden with respect to certain accounts that are currently exempt under the $25,000 threshold. Specifically, this transition rule provides that, if an open-end credit account is exempt on July 20, 2011 based on a firm commitment to extend more than $25,000 in credit, the creditor has until December 31, 2011 to either retain the exemption by increasing the firm commitment to more than $50,000 or begin complying with Regulation Z.

Effective Date

Section 1100H of the Dodd-Frank Act provides that Section 1100E will become effective on the designated transfer date, as defined by Section 1062 of that Act. Section 1062 of the Dodd-Frank Act requires, in relevant part, the Secretary of the Treasury to designate a single calendar date for the transfer of certain functions from other agencies to the Bureau of Consumer Financial Protection. Pursuant to Section 1062(a), the Secretary of the Treasury has determined that the designated transfer date shall be July 21, 2011. *See* 75 FR 57252 (Sept. 20, 2010). Accordingly, because Section 1100E will become effective on July 21, 2011, this final rule will be effective on that date. However, if the Secretary of Treasury designates a later transfer date pursuant to Section 1062, this final rule will instead be effective on that date.

Consumer group commenters argued that, because Section 1100E placed creditors on notice of the increased threshold amount, creditors should be required to begin complying with all aspects of the Board's rule on July 21, 2011. In contrast, one industry commenter requested that the Board delay compliance by one year (*i.e.,* until July 21, 2012). This commenter asserted that—in light of the extensive regulatory changes required by the Dodd-Frank Act and other statutes—it would be burdensome for small institutions to comply with Regulation Z for credit extensions and firm commitments of $50,000 or less by July 21, 2011. However, the Board understands that institutions that extend consumer credit generally already have the systems in place to comply with Regulation Z. Thus, as a general matter, it should not be unduly burdensome for these institutions to comply with Regulation Z with respect to accounts opened after July 21, 2011. Nevertheless, as discussed in detail below with respect to the transition rule in § 226.3(b)(2), the Board believes it is appropriate to provide additional time for compliance with respect to certain exempt accounts opened prior to July 21, 2011.

III. Statutory Authority

TILA mandates that the Board prescribe regulations to carry out TILA's purposes and specifically authorizes the Board, among other things, to do the following:

- Issue regulations that contain such classifications, differentiations, or other provisions, or that provide for such adjustments and exceptions for any class of transactions, that in the Board's judgment are necessary or proper to effectuate the purposes of TILA, facilitate compliance with that Act, or prevent circumvention or evasion. 15 U.S.C. 1604(a).
- Exempt from all or part of TILA any class of transactions if the Board determines that TILA coverage does not provide a meaningful benefit to consumers in the form of useful information or protection. The Board must consider factors identified in TILA and publish its rationale at the time it proposes an exemption for comment. 15 U.S.C. 1604(f).

For the reasons discussed below, the Board believes that it is necessary and appropriate to make amendments to Regulation Z in order to effectuate the purposes of TILA, to prevent circumvention, and to facilitate compliance.

IV. Section-by-Section Analysis

Section 226.3 Exempt Transactions

3(b) Credit Over Applicable Threshold Amount

Section 226.3(b) of Regulation Z implements the exemption for certain consumer credit transactions in TILA Section 104(3). Specifically, § 226.3(b) currently provides that Regulation Z does not apply to an extension of credit in which the amount financed exceeds $25,000 or in which there is an express written commitment to extend credit in excess of $25,000, unless: (1) The extension of credit is secured by real property, or by personal property used or expected to be used as the principal dwelling of the consumer; or (2) the extension of credit is a private education loan (as defined in § 226.46(b)(5)). Section 1100E(a)(1) of the Dodd-Frank Act increases the dollar amount of the exemption threshold in TILA Section 104(3) from $25,000 to $50,000. Furthermore, Section 1100E(b) requires that this amount be adjusted annually for inflation. Accordingly, the Board is amending § 226.3(b) and the accompanying commentary to implement Section 1100E.

3(b)(1) Exemption

The Board proposed to redesignate current § 226.3(b) as § 226.3(b)(1)(i) and add a new § 226.3(b)(1)(ii) to provide that the threshold amount will be adjusted annually to reflect any annual percentage increase in the CPI–W.[1] Because the threshold amount could change from year to year, § 226.3(b)(1)(i) refers to the "applicable threshold amount," rather than stating a specific amount.[2] Instead, new § 226.3(b)(1)(ii) provides that the threshold amount applicable to a specific extension of credit or express written commitment to extend credit is listed in the official staff commentary. The Board also proposed to amend § 226.3(b) to require that, in order for an account to be exempt based on an initial extension of credit, the amount of credit *extended* (rather than the amount *financed*) must exceed the applicable threshold amount.

One industry commenter requested that the Board only increase the exemption threshold amount to $50,000 without making subsequent annual adjustments for inflation. The Board believes that such an approach would be inconsistent with Section 1100E(b), which requires that the exemption threshold amount be adjusted annually based on increases in the CPI–W.

Consumer groups and a member of Congress requested that the Board amend § 226.3(b) to eliminate the exemption for accounts with an express written commitment (or firm commitment) to extend credit in excess of the threshold amount. These commenters noted that TILA Section 104(3) does not provide a firm commitment exemption. Furthermore, they expressed concern that a credit card account with a credit limit that exceeds the threshold amount would be exempt from TILA and therefore from the consumer protections in the Credit Card Accountability Responsibility and Disclosure Act of 2009 (Credit Card Act), which amended TILA.

For purposes of obtaining an exemption, Regulation Z has treated a

[1] The Board notes that, consistent with the Dodd-Frank Act, § 226.3(b)(1)(ii) requires that the annual adjustment for inflation reflect the "annual percentage increase" in the CPI–W, as applicable. Therefore, an annual period of deflation or no inflation would not require a change in the threshold amount.

[2] For consistency, the Board proposed to remove the references to the $25,000 threshold from comments 2(a)(19)–3 and 23(a)(1)–5. The Board did not receive any comments on these revisions, which are adopted as proposed.

creditor's firm commitment to extend credit in excess of the threshold amount as the functional equivalent of an extension of credit in excess of that amount since the 1980s. As a result, creditors ranging from large financial institutions to small community banks and credit unions have been relying on this exemption for more than twenty years. Section 1100E did not repeal the firm commitment exemption, and the Board's December 2010 Regulation Z Proposed Rule did not request comment on whether the exemption should be eliminated. Thus, if the Board were to eliminate this exemption, it would do so without the benefit of public comment regarding the operational burden on creditors and the effect on the cost and availability of credit for consumers. For these reasons, this final rule retains the firm commitment exemption.[3]

The Board also notes that a credit card account is not exempt from TILA and the Credit Card Act simply because the credit card issuer sets the credit limit on the account above the threshold amount. Instead, as discussed in detail below, an open-end account does not qualify for an exemption based on a firm commitment unless the creditor makes an express commitment in writing to extend a total amount of credit that exceeds the threshold amount. Furthermore, the creditor must honor transactions up to the committed amount without requiring additional credit information (although creditors are permitted to, for example, verify the value of collateral before making an extension and perform periodic reviews of the consumer's creditworthiness).[4] Thus, unless a credit card issuer can satisfy these requirements, a credit card account with a credit limit above the threshold amount does not qualify for a firm commitment exemption and is subject to TILA and the Credit Card Act.

The member of Congress also suggested that, for accounts that are exempt based on an initial extension of credit, the Board require a creditor to begin to comply with Regulation Z if, at any point in time during the life of the account, the outstanding balance does not exceed the threshold amount. He argued this approach would be consistent with TILA Section 104(3), which refers to "the total amount financed." Because, however, the balance on an account will almost always fall below the threshold amount as it is repaid, the Board is concerned that this approach would be contrary to the purpose of TILA Section 104(3) because it would effectively prevent any account from remaining exempt based on an initial extension of credit above the threshold. Furthermore, the Board believes that conditioning the exemption on the amount of credit extended—and not the amount financed—promotes consumer understanding.[5]

Therefore, in order to effectuate the purposes of TILA and to facilitate compliance, the Board uses its authority under TILA Section 105(a) to adopt § 226.3(b)(1) as proposed, with non-substantive revisions to its headings. 15 U.S.C. 1604(a). As discussed below, the Board is also revising and reorganizing the commentary to § 226.3(b).

Threshold Amount

The Board proposed a new comment 3(b)–1 listing the threshold amounts in effect for specific periods of time.[6] In particular, the proposed comment clarified that, prior to July 21, 2011, the threshold amount is $25,000 and that, from July 21, 2011 through December 31, 2011, the threshold amount will be $50,000. The proposed comment also clarified that the threshold amount will be adjusted effective January 1 of each year by any annual percentage increase in the CPI–W that was in effect on the preceding June 1.[7] The comment will be amended to provide the threshold amount for the upcoming year after the annual percentage change in the CPI–W that was in effect on the previous June 1 becomes available. For example, after the annual percentage change in the CPI–W in effect on June 1, 2011 becomes available, comment 3(b)-1 will be amended to provide the threshold amount in effect beginning on January 1, 2012. The Board received only one comment regarding this approach, which stated that the proposed timeframe would provide adequate time for creditors to comply with any inflation adjustment in the threshold amount.

Proposed comment 3(b)–1 further clarified that any increase in the threshold amount will be rounded to the nearest $100 increment. For example, if the annual percentage increase in the CPI–W would result in a $950 increase in the threshold amount, the threshold amount will be increased by $1,000. However, if the annual percentage increase in the CPI–W would result in a $949 increase in the threshold amount, the threshold amount will be increased by $900. This approach is consistent with Section 1100E(b) of the Dodd-Frank Act, which provides that annual CPI–W adjustments should be "rounded to the nearest multiple of $100, or $1,000, as applicable." The Board believes that Congress did not intend for an annual CPI–W adjustment to be rounded to the nearest $100 in some circumstances but to the nearest $1,000 in others, which could lead to anomalous results. Because $1,000 is itself a multiple of $100, the Board believes that this commentary clarifies the statutory language in a manner consistent with the intent of Section 1100E. The only comment the Board received on this aspect of the proposal supported the proposed clarification with respect to rounding. Accordingly, for the reasons discussed above, the Board is adopting comment 3(b)–1 as proposed.

Open-End Credit

Proposed comment 3(b)–2 provided guidance on the application of § 226.3(b)(1) to open-end credit accounts. Consistent with the existing commentary, proposed comment 3(b)–2.i clarified that an open-end account qualifies for exemption under § 226.3(b) (unless secured by any real property, or by personal property used or expected to be used as the consumer's principal dwelling) if either: (1) The creditor makes an initial extension of credit that exceeds the threshold amount; or (2) the creditor makes a firm written commitment to extend a total amount of credit in excess of the threshold amount with no requirement of additional credit information for any advances on the account (except as permitted from time

[3] As an alternative to eliminating the firm commitment exemption, consumer group commenters requested that, in order to prevent evasion, the Board prohibit creditors from reducing a firm commitment for at least six months after account opening. However, this requirement would involve a substantial limitation to the firm commitment exemption that was not set forth in the proposed rule and therefore was not the subject of public comment.

[4] Because a creditor that makes a firm commitment must honor transactions up to the committed amount without requiring additional credit information, the Board understands that some creditors do not utilize the firm commitment exemption because of the cost associated with maintaining capital to honor advances for available credit on a committed line.

[5] For a discussion of the results of the Board's consumer testing regarding the "amount financed," see 74 FR 43232, 43308 (Aug. 26, 2009).

[6] For organizational purposes, the guidance in current comment 3(b)–1 has been moved to other comments, as discussed below.

[7] The Dodd-Frank Act specifically requires that the threshold amount be adjusted annually by any annual percentage increase in the CPI–W, as published by the Bureau of Labor Statistics; however, it does not specify which Bureau of Labor Statistics report should be used to determine that increase. Consistent with its approach for annual adjustments in § 226.32(a)(1)(ii), the Board will use the CPI–W reported by the Bureau of Labor Statistics for June 1 of each year. *See* 12 CFR 226.32(a)(1)(ii) and its commentary. The Board believes this approach permits the publication of an increased threshold amount sufficiently in advance of the January 1 effective date.

to time with respect to open-end accounts pursuant to § 226.2(a)(20)).

In addition, in order to provide certainty regarding the exemption status of an account, the Board proposed to clarify in comment 3(b)–2.i that the initial extension of credit or firm commitment must be made at account opening for purposes of determining whether an open-end account is exempt under § 226.3(b). Some industry commenters supported the requirement that a firm commitment to extend credit in excess of the threshold amount occur at account opening; however, other industry commenters specifically opposed this requirement with respect to initial extensions of credit. In particular, they argued that many consumers open an account in order to have access to credit at a future time and do not want an extension at account opening. In addition, some industry commenters argued that the proposed requirement would impose a significant compliance burden on creditors who offer open-end lines of credit associated with brokerage accounts, which are serviced on systems that cannot presently provide Regulation Z disclosures. They stated that these lines of credit are structured to be exempt under § 226.3(b) based on a contractual requirement that the initial extension of credit must exceed the applicable threshold amount, even if that extension does not occur at account opening.

Based on the comments and further consideration, the Board believes that it is not necessary to require that the initial extension of credit be made at account opening for purposes of § 226.3(b). Instead, the Board has revised comment 3(b)–2.i to clarify that an account is exempt under § 226.3(b) based on an initial extension of credit at or after account opening, provided that extension exceeds the threshold amount in effect at the time the extension is made. In addition to providing flexibility, this approach is consistent with Section 1100E of the Dodd-Frank Act because, regardless of when the account is opened, the initial extension of credit must exceed the threshold amount (as adjusted based on the CPI–W) that is in effect at the time the extension is made. Neither the Dodd-Frank Act nor TILA requires that the initial extension occur at account opening.

However, in order to ensure that consumers are fully protected, the final rule clarifies that, if a creditor makes an initial extension of credit after account opening that does not exceed the threshold amount in effect at the time the extension is made, the creditor must have satisfied all of the applicable requirements of Regulation Z from the date the account was opened (or earlier, if applicable). For example, assume that the threshold amount is $50,000 and that, after account opening, the creditor makes an initial extension of credit of $50,000 or less. In this circumstance, the account is not exempt and the creditor must have satisfied all of the applicable requirements of Regulation Z from the date the account was opened (or earlier, if applicable), including but not limited to the requirements of § 226.6 (account-opening disclosures), § 226.7 (periodic statements), § 226.52 (limitations on fees), and § 226.55 (limitations on increasing annual percentages rates, fees, and charges). Illustrative examples are provided. Comment 3(b)–2.i is otherwise adopted as proposed.

Proposed comment 3(b)–2.ii provided general guidance regarding circumstances in which an account that was exempt under § 226.3(b) no longer qualifies for an exemption. An account would cease to be exempt, for example, if a security interest is taken at a later time in any real property, or in the consumer's principal dwelling. Specifically, the comment clarified that a creditor must begin to comply with all of the applicable requirements of Regulation Z within a reasonable period of time after an account ceases to be exempt. For example, if an open-end account ceases to be exempt, the creditor must within a reasonable period of time provide the disclosures required by § 226.6 reflecting the current terms of the account and begin to provide periodic statements consistent with § 226.7.

Industry commenters, including trade associations representing credit unions and community banks, argued that the proposed guidance would impose significant operational difficulties and requested further clarification regarding creditors' responsibilities when an account no longer qualifies for an exemption under § 226.3(b). Consumer group commenters generally supported the proposed guidance, but requested that, to the extent that a creditor imposed charges that were inconsistent with Regulation Z while the account was exempt, the creditor be required to refund those charges once the exemption is lost.

In order to clarify the proposed guidance, the Board is revising comment 3(b)–2.ii to state that, once an exempt account ceases to be exempt, the applicable requirements of Regulation Z apply prospectively to any balances on the account. For example, if a credit card account under an open-end (not home-secured) consumer credit plan ceases to be exempt, the protections in § 226.55 generally prevent the card issuer from increasing the rate that applies to the account's existing balance, even if that balance consists of transactions that occurred while the account was exempt. The Board further clarifies, however, that the creditor is not required to comply with the requirements of Regulation Z retroactively for the period of time during which the account was exempt. Thus, for example, a creditor is not required to refund amounts charged during the period the account was exempt or to provide disclosures regarding transactions or changes in account terms that occurred during that period. Finally, because the Board understands that many creditors voluntarily comply with Regulation Z for exempt accounts, the final rule clarifies that, if a creditor provided disclosures consistent with the requirements of Regulation Z while the account was exempt (including account-opening disclosures consistent with § 226.6 and change-in-terms notices consistent with § 226.9), the creditor is not required to provide the disclosures required by § 226.6 reflecting the current terms of the account if the account ceases to be exempt.

Proposed comment 3(b)–2.iii addressed the effect of subsequent changes when an open-end account is exempt under § 226.3(b) based on an initial extension of credit. The comment clarified that, if a creditor makes an initial extension of credit that exceeds the threshold amount in effect at that time, the account remains exempt under § 226.3(b) regardless of a subsequent increase in the threshold amount as a result of an increase in the CPI–W. Furthermore, in these circumstances, the account remains exempt even if there are no further extensions of credit, subsequent extensions of credit do not exceed the threshold amount, the account balance is subsequently reduced below the threshold amount (such as through repayment of the extension), or the credit limit for the account is subsequently reduced below the threshold amount. Comment 3(b)–2.iii also clarified that, if the initial extension of credit on an account does not exceed the threshold amount in effect at the time of the extension, the account will not become exempt under § 226.3(b) even if the account balance later exceeds the threshold amount (for example, due to the subsequent accrual of interest).

Industry commenters generally supported the Board's proposal. Although one industry commenter requested that an account become

exempt once the total amount of the transactions on the account exceeds the threshold, the Board does not believe that this approach would be consistent with the intent of TILA Section 104(3). Accordingly, the Board is adopting comment 3(b)–2.iii as proposed with revisions for clarity and consistency.

Proposed comment 3(b)–2.iv addressed the effect of subsequent changes when an open-end account is exempt under § 226.3(b) based on a firm commitment to extend credit, rather than an initial extension of credit. In particular, proposed comment 3(b)–2.iv.A clarified that if the firm commitment does not exceed the threshold amount, the account is not exempt under § 226.3(b) even if the account balance later exceeds the threshold amount (for example, due to the subsequent accrual of interest). In addition, the proposed comment stated that, in order for an open-end account to remain exempt under § 226.3(b) based on a firm commitment, the amount of the firm commitment must continue to exceed the threshold amount currently in effect, as adjusted annually. Thus, in order for an account to remain exempt under the proposed rule, a creditor could not reduce its firm commitment below the threshold amount currently in effect and would have been required to increase its firm commitment when it no longer exceeded the threshold amount due to increases in the threshold as a result of increases in the CPI–W.

Trade associations representing credit unions and community banks opposed the proposed requirement that, in order for an account to remain exempt based on a firm commitment, the amount of the commitment must continue to exceed the threshold amount currently in effect. These commenters argued that the continuous monitoring of such accounts would impose significant operational costs and compliance burdens, particularly on small institutions. Several industry commenters requested the Board clarify that if an account is exempt based on a firm commitment in excess of the threshold amount at account opening, the account will remain exempt regardless of subsequent increases in the threshold amount as a result of inflation. In addition, some industry commenters argued that the account should remain exempt even if the creditor reduces the firm commitment below the applicable threshold amount. One industry commenter, however, noted that creditors frequently renew lines of credit and that the amount of firm commitment is rarely reduced before renewal. This commenter requested that the Board provide additional flexibility to creditors when the consumer requests a reduction in the firm commitment amount.

As discussed above, consumer groups and a member of Congress requested that the Board eliminate the firm commitment exemption. In the alternative, consumer group commenters urged the Board to adopt the proposed requirement that the firm commitment continue to exceed the threshold amount.

Based on the comments and further analysis, the Board is revising proposed comment 3(b)–2.iv.A in order to ease some of the compliance burden for creditors, while retaining protections against circumvention. As discussed below with respect to the transition rule in § 226.3(b)(2), all creditors that currently rely on the firm commitment exemption must review their accounts and either increase their firm commitments to more than $50,000 by December 31, 2011 or begin to comply with Regulation Z. Although this requirement will impose a one-time burden on creditors, the Board believes that, because Section 1100E of the Dodd-Frank Act was intended to expand TILA's coverage to transactions involving higher dollar amounts, it would be inconsistent with that intent to allow existing accounts to remain exempt based on firm commitments of less than $50,000. In contrast, however, the Board does not believe it would be appropriate to require creditors to continually review and adjust accounts that are exempt based on a firm commitment due to any incremental CPI–W increases in the threshold amount. In particular, the Board notes that, for smaller institutions with limited resources, the burden of monitoring the firm commitment amount in accordance with annual increases in the threshold amount is likely to be significant. In some cases, the Board understands that small institutions would have to conduct this review manually. Accordingly, the Board has revised comment 3(b)–2.iv.A to clarify that if a creditor makes a firm commitment at account opening to extend a total amount of credit that exceeds the threshold amount in effect at that time, the open-end account remains exempt under § 226.3(b) regardless of a subsequent increase in the threshold amount as a result of an increase in the CPI–W. For example, if the applicable threshold amount is $50,000 and an account is exempt at account opening based on a firm commitment of $55,000, the account remains exempt even if the threshold amount subsequently increases to $56,000 as a result of increases in the CPI–W.

However, in order to prevent circumvention, the Board is adopting the proposed guidance in comment 3(b)–2.iv.A with respect to a reduction in a firm commitment. Accordingly, the revised comment clarifies that if a creditor reduces a firm commitment, the account ceases to be exempt unless the reduced firm commitment exceeds the threshold amount in effect at the time of the reduction. For example, if the applicable threshold amount is $56,000 and a $60,000 firm commitment on an exempt account is reduced to $52,000, the account no longer qualifies for an exemption based on the firm commitment. However, if the firm commitment on the exempt account is reduced to $58,000, the account remains exempt because the firm commitment still exceeds the threshold amount in effect at the time of the reduction. This guidance applies to any reduction in the firm commitment, whether upon the creditor's initiative or the borrower's request. The Board believes that the final rule does not impose any unwarranted monitoring burden in these circumstances because the creditor presumably would review the account in order to determine whether to reduce the firm commitment.

Proposed comment 3(b)–2.iv.B clarified that when an open-end account no longer qualifies for an exemption under § 226.3(b) based on a firm commitment, the creditor would not be required to begin complying with Regulation Z if it permitted the consumer to repay any outstanding balance on the account consistent with the account terms without providing additional extensions of credit. This guidance was based on the Board's concern that, if an account ceased to be exempt, the creditor would close the account and require the consumer to repay the outstanding balance rather than begin to comply with Regulation Z. Consumer group commenters opposed adoption of this guidance, arguing that creditors should be required to comply with Regulation Z in these circumstances. In addition, an industry trade association stated that creditors generally comply with Regulation Z even if an account qualifies for an exemption under § 226.3(b). Based on these comments and further analysis, the Board believes that this guidance is not necessary. Furthermore, as discussed above, the Board has revised comment 3(b)–2.ii to provide additional guidance and flexibility for accounts that no longer qualify for an exemption under § 226.3(b). Accordingly, the final

rule does not adopt proposed comment 3(b)–2.iv.B.

Finally, proposed comment 3(b)–2.iv.C addressed circumstances in which an account qualifies for a § 226.3(b) exemption at account opening based on a firm commitment and the creditor subsequently makes an initial extension of credit that exceeds the applicable threshold amount. The comment clarified that, in these circumstances, the account qualifies for a § 226.3(b) exemption based on the initial extension of credit if that extension is a single advance exceeding the threshold amount at the time of the extension. As a result, the account would remain exempt under § 226.3(b) even if the firm commitment is subsequently reduced below the threshold amount. For example, assume that, at account opening on January 1 of year one, the threshold amount in effect is $50,000 and the account is exempt under § 226.3(b) based on the creditor's firm commitment to extend $53,000 in credit. On July 1 of year one, the consumer uses the account for an initial extension of $52,000, which is taken in a single advance. As a result of this extension of credit, the account remains exempt under § 226.3(b) even if, after July 1, the creditor reduces the firm commitment to $50,000 or less.

One industry commenter suggested that the Board permit accounts to qualify for an exemption in these circumstances based on multiple advances that, in total, exceed the applicable threshold amount, instead of a single, initial advance. For consistency with the guidance in revised comment 3(b)–2.i, the Board declines to adopt this suggestion. Therefore, comment 3(b)–2.iv.C is renumbered as comment 3(b)(2)–2.iv.B for organizational purposes and otherwise adopted as proposed, with non-substantive revisions for clarity and consistency.

Closed-End Credit

Proposed comment 3(b)–3 provided guidance on the application of § 226.3(b)(1) to closed-end loans. Specifically, comment 3(b)–3.i clarified that a closed-end loan is exempt under § 226.3(b) in either of two circumstances (unless the extension of credit is secured by any real property, or by personal property used or expected to be used as the consumer's principal dwelling; or is a private education loan as defined in § 226.46(b)(5)).

First, the comment clarified that a closed-end loan would be exempt if the creditor makes an extension of credit at consummation that exceeds the threshold amount in effect at the time of consummation. In these circumstances, the loan remains exempt under § 226.3(b) even if the amount owed is subsequently reduced below the threshold amount, such as through repayment.

Second, the comment clarified that a closed-end loan would be exempt if the creditor makes a loan commitment at consummation to extend a total amount of credit in excess of the threshold amount in effect at the time of consummation. The comment further clarified that, in these circumstances, the loan remains exempt under § 226.3(b) even if the total amount of credit actually extended does not exceed the threshold amount.[8] This guidance addressed loan commitments for closed-end credit with terms that provide for scheduled advances or advances at the consumer's option, where the total amount of credit ultimately drawn may be less than the original loan commitment on which the exemption was based.

Proposed comment 3(b)–3.ii provided guidance on the effect of subsequent changes to a closed-end loan or loan commitment or to the threshold amount. Specifically, the comment clarified that, if a creditor makes an extension of credit or loan commitment to extend credit that exceeds the threshold amount in effect at the time of consummation, the closed-end loan remains exempt under § 226.3(b) regardless of a subsequent increase in the threshold amount, such as an increase as a result of Section 1100E or an increase in the CPI–W. In addition, the proposed comment incorporated existing guidance regarding the refinancing of an exempt closed-end loan. Consumer groups and one industry commenter generally supported the proposed comment. Accordingly, the Board is adopting comment 3(b)–3 as proposed with non-substantive revisions for clarity.

Additional Commentary

Proposed comment 3(b)–4 provided guidance when a security interest in any real property, or in personal property used or expected to be used as the consumer's principal dwelling, is added to an existing account or loan that is exempt under § 226.3(b). The proposed comment incorporated guidance from current comments 3(b)–2.ii and 3(b)–3 with respect to open-end credit and closed-end credit, respectively. The Board did not receive substantive comments on proposed comment 3(b)–4, which is adopted as proposed with non-substantive revisions for clarity.

[8] This guidance is currently set forth in comment 3(b)–1.

Proposed comment 3(b)–5 incorporated the guidance currently provided in comment 3(b)–1 regarding credit extensions secured by mobile homes. Specifically, this comment clarified that the exemption in § 226.3(b) does not apply to a credit extension secured by a mobile home used or expected to be used as the principal dwelling of the consumer. The only comment to address this guidance supported adoption of the proposal. Accordingly, the Board is adopting comment 3(b)–5 as proposed.

3(b)(2) Transition Rule for Open-End Accounts Exempt Prior to July 21, 2011

The Board proposed to add a new § 226.3(b)(2) in order to address transition issues related to open-end accounts that are exempt under current § 226.3(b) but may not be exempt under the revised threshold. Specifically, proposed § 226.3(b)(2) provided that an open-end account that is exempt under § 226.3(b) on July 20, 2011 based on an extension of credit in excess of $25,000 or an express written commitment to extend credit in excess of $25,000 remains exempt until July 21, 2012. However, the account would cease to be exempt under § 226.3(b)(2) if the creditor takes a security interest in any real property, or in personal property used or expected to be used as the consumer's principal dwelling; or if the creditor reduces any express written commitment to extend credit to $25,000 or less. Section 226.3(b)(2) was proposed pursuant to the Board's authority under TILA Section 105(a) to make adjustments that are necessary to effectuate the purposes of, and to facilitate compliance with, TILA. 15 U.S.C. 1604(a).

The Board understands that many creditors currently choose to comply with Regulation Z in circumstances where the initial extension or firm commitment exceeds $25,000. For example, the Board understands that creditors offering closed-end automobile loans typically provide Regulation Z disclosures regardless of the amount of the loan. However, because some currently exempt open-end credit accounts may be serviced on systems that cannot presently provide Regulation Z disclosures, the Board proposed a transition period in order to provide additional flexibility and facilitate compliance with the revisions to § 226.3(b).

In particular, the Board noted that this concern exists with respect to certain open-end lines of credit associated with brokerage accounts that are serviced on systems that cannot currently provide

Regulation Z disclosures.[9] Industry commenters indicated that creditors offering this type of product would generally be able to comply with the increased threshold amount on July 21, 2011 by requiring that any initial extensions of credit on or after that date exceed $50,000; however, they requested that the Board delay the mandatory compliance date for the proposed requirement that an initial extension of credit occur at account opening. As discussed above, the Board is revising its commentary to clarify that the initial extension of credit on an open-end account is not required to occur at account opening for purposes of § 226.3(b). Therefore, with respect to accounts that are exempt based on an initial extension of credit, the Board believes additional compliance time is not required. Accordingly, the Board is not adopting the proposed transition rule for these accounts.

However, the Board believes that it is appropriate to provide creditors that are currently relying on a firm commitment exemption with additional time to adjust to the increase in the threshold amount from $25,000 to $50,000 pursuant to Section 1100E. As noted above, the Board believes that it would be inconsistent with the intent of Section 1100E to permit accounts to remain exempt based on firm commitments to extend more than $25,000 (but less than $50,000) in credit. Thus, in order to comply with the final rule, creditors must review all accounts that are currently exempt based on a firm commitment and, to the extent the commitment does not exceed $50,000, either increase the commitment or begin to comply with Regulation Z. Industry commenters argued that this task would be burdensome (particularly for small institutions) and requested additional time to comply. However, as noted above, consumer group commenters opposed providing any additional time for compliance.

Based on the comments and further analysis, the Board believes it is appropriate to provide additional time for creditors who currently rely on the firm commitment exemption to make the necessary adjustments to comply with the one-time increase from $25,000 to $50,000; however, the Board does not believe that the proposed one-year transition period is necessary because the Board understands that these creditors generally have the systems and procedures in place to comply with Regulation Z. Accordingly, as adopted in the final rule, § 226.3(b)(2) provides that an open-end account that is exempt on July 20, 2011 based on an express written commitment to extend credit in excess of $25,000 generally remains exempt until December 31, 2011. The Board believes that this will provide creditors with sufficient time to review their accounts and make the necessary adjustments.

The Board is revising proposed comment 3(b)–6 to provide guidance regarding the application of revised § 226.3(b)(2). In particular, the comment clarifies that if, on July 20, 2011, an open-end account is exempt under § 226.3(b) based on a firm commitment to extend credit in excess of $25,000, the account generally remains exempt under § 226.3(b)(2) until December 31, 2011 (unless the firm commitment is reduced to $25,000 or less). If the firm commitment is increased on or before December 31, 2011 to an amount in excess of $50,000, the account remains exempt under § 226.3(b)(1) regardless of subsequent increases in the threshold amount as a result of increases in the CPI–W. If the firm commitment is not increased on or before December 31, 2011 to an amount in excess of $50,000, the account ceases to be exempt under the § 226.3(b) based on a firm commitment. Furthermore, comment 3(b)–6 clarifies that § 226.3(b)(2) applies only to open-end accounts opened prior to July 21, 2011 and does not apply if a security interest is taken in any real property, or in personal property used or expected to be used as the consumer's principal dwelling.

V. Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) generally requires an agency to perform an initial and a final regulatory flexibility analysis on the impact a rule is expected to have on small entities. However, under section 605(b) of the RFA, the regulatory flexibility analysis otherwise required under section 604 of the RFA is not required if an agency certifies, along with a statement providing the factual basis for such certification, that the rule will not have a significant economic impact on a substantial number of small entities. The Board has prepared the following final regulatory flexibility analysis pursuant to section 604 of the RFA.

Based on its initial and final analyses and for the reasons stated below, the Board believes that this final rule will not have a significant economic impact on a substantial number of small entities.

1. *Statement of the need for, and objectives of, the final rule.* The final rule implements Section 1100E of the Dodd-Frank Act, which increases the threshold for consumer credit transactions exempt under TILA from $25,000 to $50,000. Section 1100E also provides that this threshold shall be adjusted annually to reflect any annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W). The supplementary information above describes in detail the reasons, objectives, and legal basis for each component of the final rule.

2. *Summary of the significant issues raised by public comment on Board's initial analysis, the Board's assessment of such issues, and a statement of any changes made as a result of such comments.* An industry group representing credit unions requested that, in order to reduce regulatory burden, the Board provide additional guidance regarding the types of records that institutions are required to retain in order to demonstrate compliance with Regulation Z. Section 226.25 states that creditors must retain "evidence of compliance with this regulation (other than advertising requirements under sections 226.16 and 226.24) for two years after the date disclosures are required to be made or action is required to be taken." Comment 25–2 clarifies that "[a]dequate evidence of compliance does not necessarily mean actual paper copies of disclosure statements or other business records." Instead, "[t]he evidence may be retained on microfilm, microfiche, or by any other method that reproduces records accurately (including computer programs)." Furthermore, "[t]he creditor need retain only enough information to reconstruct the required disclosures or other records. Thus, for example, the creditor need not retain each open-end periodic statement, so long as the specific information on each statement can be retrieved."

Because the current regulation and commentary provide creditors with considerable flexibility regarding the retention of records, the Board is concerned that adopting a more specific set of requirements (such as a list of documents that creditors must retain) could increase regulatory burden, rather than reducing it. Furthermore, because the Board did not propose any amendments to the record retention requirements in § 226.25, any revisions to those requirements would not have the benefit of input from the public, including small institutions. Accordingly, the final rule does not alter the requirements of § 226.25.

[9] To the extent the creditors who provide these accounts are not broker-dealers, the accounts are not exempt under § 226.3(d).

3. *Small entities affected by the final rule.* All creditors that offer closed-end or open-end consumer credit extensions that exceed $25,000 but do not exceed $50,000, as adjusted annually to reflect increases in the CPI–W, would be affected by the final rule. Based on 2010 call report data, the Board estimates that there are approximately 4,360 banks and thrifts with assets of $175 million or less and 6,655 credit unions with assets of $175 million or less, that would be required to comply with the Board's final rule. The Board acknowledges, however, that the total number of small entities likely to be affected by the final rule is unknown, in part because Regulation Z has broad applicability to individuals and businesses that extend even small amounts of consumer credit. In addition, it is unclear how many of these small entities currently do not have systems in place to comply with Regulation Z because they only extend credit in excess of $25,000. It is also unclear how many of those entities will choose to engage in consumer credit transactions between $25,000 and $50,000, as opposed to only making loans above the new threshold.

4. *Recordkeeping, reporting, and compliance requirements.* The final rule imposes new recordkeeping, reporting, and compliance requirements under Regulation Z on creditors that extend consumer credit in amounts that exceed $25,000 but do not exceed $50,000, as adjusted annually to reflect increases in the CPI–W. The Board understands that small entities that offer consumer credit generally have systems in place to comply with Regulation Z for extensions of credit of $25,000 or less. The Board notes that the precise costs to small entities to provide Regulation Z disclosures to accounts with consumer credit extensions of more than $25,000 but not more than $50,000, and the costs of updating their systems to comply with the final rule, are difficult to predict. These costs would depend on a number of factors that are unknown to the Board, including, among other things, the specifications of the current systems used by such entities to prepare and provide disclosures and administer accounts, the complexity of the terms of the products that they offer, and the range of such product offerings. One industry commenter noted that the Board's rule could impose operational burden on smaller institutions with respect to open-end accounts exempt prior to July 21, 2011. The Board, however, has revised the rule to provide creditors, particularly smaller institutions, with additional flexibility to ease compliance burden.

Final Amendments

This subsection summarizes several of the final amendments to Regulation Z and their likely impact on small entities. More information regarding these and other changes can be found in IV. Section-by-Section Analysis.

On July 21, 2011, the amendments to § 226.3(b)(1)(i) and its accompanying commentary raise the threshold for exempt consumer credit transactions from $25,000 to $50,000. For accounts which do not qualify for the exemption under the new threshold, creditors that are small entities are required to comply with all applicable Regulation Z requirements. The Board anticipates that creditors that are small entities, with some additional burden, will service accounts which do not meet the increased threshold for exemption on the same systems in place for non-exempt accounts. Furthermore, the Board understands that some creditors that are small entities generally do not rely on the exemption in § 226.3(b) and comply with Regulation Z regardless of the amount of the credit extension. Therefore, the Board does not anticipate significant additional burden on small entities by raising the exemption threshold dollar amount.

Under § 226.3(b)(1)(ii), the threshold amount must be adjusted annually by any annual percentage increase in the CPI–W. To the extent creditors that are small entities rely on the exemption under § 226.3(b), § 226.3(b)(1)(ii) requires those creditors to establish processes and alter their systems in order to comply with the provision. The cost of such changes would depend on the size of the institution and the composition of its portfolio. The Board anticipates that creditors that are small entities, with some additional burden, will service accounts which do not or may not meet the applicable threshold for exemption on the same systems in place for non-exempt accounts. In addition, as noted above, the Board understands that many creditors that are small entities generally comply with Regulation Z regardless of the amount of the credit extension. Furthermore, as discussed above, the Board has revised the proposed rule to reduce the monitoring burden for small entities that rely on the firm commitment exemption. As a result, the Board does not anticipate significant additional burden on small entities by adjusting the exemption threshold dollar amount annually for inflation.

Section 226.3(b)(2) addresses circumstances where certain previously exempt open-end accounts would cease to qualify for an exemption based on a firm commitment on July 21, 2011 under the revised threshold amount. Under § 226.3(b)(2), these accounts would have until December 31, 2011 to comply with the revised threshold amount in effect at that time ($50,000). Therefore, the Board has reduced the burden on small entities that rely on the firm commitment exemption by providing additional time to comply with the final rule.

Accordingly, the Board believes that, in the aggregate, the provisions of its final rule would not have a significant economic impact on a substantial number of small entities.

5. *Significant alternatives to the revisions.* The provisions of the final rule would implement the statutory requirements of the Dodd-Frank Act, which establish new threshold requirements for exempt consumer credit transactions. As discussed above in the supplementary information, the Board has revised the proposed rule to reduce the compliance burden for small entities and to provide small entities with additional time to come into compliance, while effectuating the statute in a manner that is beneficial to consumers.

VI. Paperwork Reduction Act Analysis

In accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3506; 5 CFR part 1320 Appendix A.1), the Board reviewed the final rule under the authority delegated to the Board by the Office of Management and Budget (OMB). In addition, as permitted by the PRA, the Board extends for three years the current recordkeeping and disclosure requirements in connection with Regulation Z. The collection of information that is required by this final rule is found in 12 CFR part 226. The Board may not conduct or sponsor, and an organization is not required to respond to, this information collection unless the information collection displays a currently valid OMB control number. The OMB control number is 7100–0199.

This information collection is required to provide benefits for consumers and is mandatory (15 U.S.C. 1601 *et seq.*). The respondents/recordkeepers are creditors and other entities subject to Regulation Z, including for-profit financial institutions, small businesses, and institutions of higher education. TILA and Regulation Z are intended to ensure effective disclosure of the costs and terms of credit to consumers. For open-end credit, creditors are required to, among other things, disclose information about the initial costs and terms and to provide periodic

statements of account activity, notices of changes in terms, and statements of rights concerning billing error procedures. Regulation Z requires specific types of disclosures for credit and charge card accounts and for home-equity plans. For closed-end loans, such as mortgage and installment loans, cost disclosures are required to be provided prior to consummation. Special disclosures are required in connection with certain products, such as reverse mortgages, certain variable-rate loans, and certain mortgages with rates and fees above specified thresholds. TILA and Regulation Z also contain rules concerning credit advertising. Creditors are required to retain evidence of compliance for 24 months (§ 226.25), but Regulation Z does not specify the types of records that must be retained.

Under the PRA, the Board accounts for the paperwork burden associated with Regulation Z for the state member banks and other creditors supervised by the Board that engage in lending covered by Regulation Z and, therefore, are respondents under the PRA. Appendix I of Regulation Z defines the Board-regulated institutions as: state member banks, branches and agencies of foreign banks (other than federal branches, federal agencies, and insured state branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act. Other federal agencies account for the paperwork burden on other entities subject to Regulation Z. To ease the burden and cost of compliance with Regulation Z (particularly for small entities), the Board provides model forms, which are appended to the regulation.

The current total annual burden to comply with the provisions of Regulation Z is estimated to be 1,497,362 hours for the 1,138 institutions [10] supervised by the Board that are deemed to be respondents for the purposes of the PRA.

On July 21, 2011, the amendments to § 226.3(b)(1)(i) and its accompanying commentary raise the threshold for exempt consumer credit transactions from $25,000 to $50,000. In addition, § 226.3(b)(1)(ii) requires that the threshold dollar amount be adjusted annually for inflation to reflect any annual percentage increase in the CPI–W. As a result, creditors will now be required to comply with Regulation Z requirements for certain accounts with extensions of consumer credit—or express written commitments to extend consumer credit—of more than $25,000 but not more than $50,000, as adjusted annually to reflect increases in the CPI–W.

The Board estimates that the final rule would impose a one-time increase in the total annual burden under Regulation Z. The 1,138 respondents would take, on average, 40 hours (one business week) to update their systems to comply with the requirements of Regulation Z for loans that are no longer exempt. This one-time revision would increase the burden by 45,520 hours. On a continuing basis, the Board estimates that 1,138 respondents would take, on average, 8 hours (one business day) annually to comply with the requirements of Regulation Z for loans that are no longer exempt and would increase the ongoing burden by 9,104 hours. Thus, the total annual burden is estimated to increase by 54,624 hours (from 1,497,362 to 1,551,986 hours) during the first year after the final rule is adopted. Thereafter, the ongoing total annual burden would be 1,506,466.[11]

The total burden increase represents averages for all respondents regulated by the Board. The Board expects that the amount of time required to implement each of the changes for a given financial institution or entity may vary based on the size and complexity of the respondent. Furthermore, the Board understands that many creditors voluntarily comply with Regulation Z for accounts that are currently exempt. Therefore, the estimated burden increase likely overstates the actual increase in burden for those creditors.

The other Federal financial institution supervisory agencies (the Office of the Comptroller of the Currency (OCC), the Office of Thrift Supervision (OTS), the Federal Deposit Insurance Corporation (FDIC), and the National Credit Union Administration (NCUA)) are responsible for estimating and reporting to OMB the total paperwork burden for the domestically chartered commercial banks, thrifts, and federal credit unions and U.S. branches and agencies of foreign banks for which they have primary administrative enforcement jurisdiction under TILA Section 108(a), 15 U.S.C. 1607(a). These agencies may, but are not required to, use the Board's methodology for estimating burden. Using the Board's method, the total current estimated annual burden for the approximately 16,200 domestically chartered commercial banks, thrifts, and federal credit unions and U.S. branches and agencies of foreign banks supervised by the Board, OCC, OTS, FDIC, and NCUA under TILA would be approximately 21,813,445 hours. The final rule would impose a one-time increase in the estimated annual burden by 648,000. On a continuing basis, the final rule would impose an increase in the estimated annual burden by 129,600. Thus, the total annual burden is estimated to increase by 777,600 hours to 22,591,045 hours during the first year after the final rule is adopted. Thereafter, the ongoing total annual burden would be 21,943,045. The above estimates represent an average across all respondents and reflect variations between institutions based on their size, complexity, and practices. As noted above, the estimated burden increase likely overstates the actual increase in burden because many creditors voluntarily comply with Regulation Z for exempt accounts.

The Board has a continuing interest in the public's opinion of the collection of information. Comments on the collection of information should be sent to Cynthia Ayouch, Acting Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 95–A, Board of Governors of the Federal Reserve System, Washington, DC 20551, with copies of such comments sent to the Office of Management and Budget, Paperwork Reduction Project (7100–0199), Washington, DC 20503.

List of Subjects in 12 CFR Part 226

Advertising, Consumer protection, Federal Reserve System, Reporting and recordkeeping requirements, Truth in lending.

Text of Final Revisions

For the reasons set forth in the preamble, the Board amends Regulation Z, 12 CFR part 226, as set forth below:

PART 226—TRUTH IN LENDING (REGULATION Z)

■ 1. The authority citation for part 226 is revised to read as follows:

Authority: 12 U.S.C. 3806; 15 U.S.C. 1604, 1637(c)(5), and 1639(l); Pub. L. 111–24 § 2, 123 Stat. 1734; Pub. L. 111–203, 124 Stat. 1376.

[10] The number of Federal Reserve-supervised creditors was obtained from numbers published in the Board of Governors of the Federal Reserve System Annual Report: 878 State member banks, 258 Branches & agencies of foreign banks, and 2 Commercial lending companies.

[11] The burden estimate for this rulemaking does not include the burden addressing changes to implement the following provisions announced in separate rulemakings: Closed-End Mortgages (Docket No. R–1366) (74 FR 43232) (75 FR 58470), Home-Equity Lines of Credit (Docket No. R–1367) (74 FR 43428), Reverse Mortgages (Docket No. R–1390) (75 FR 58539), or Appraisal Independence (Docket No. R–1394) (75 FR 66554).

Subpart B—Open-End Credit

■ 2. Section 226.3(b) is revised to read as follows:

§ 226.3 Exempt transactions.

* * * * *

(b) *Credit over applicable threshold amount*—(1) *Exemption*—(i) *Requirements.* An extension of credit in which the amount of credit extended exceeds the applicable threshold amount or in which there is an express written commitment to extend credit in excess of the applicable threshold amount, unless the extension of credit is:

(A) Secured by any real property, or by personal property used or expected to be used as the principal dwelling of the consumer; or

(B) A private education loan as defined in § 226.46(b)(5).

(ii) *Annual adjustments.* The threshold amount in paragraph (b)(1)(i) of this section is adjusted annually to reflect increases in the Consumer Price Index for Urban Wage Earners and Clerical Workers, as applicable. See the official staff commentary to this paragraph (b) for the threshold amount applicable to a specific extension of credit or express written commitment to extend credit.

(2) *Transition rule for open-end accounts exempt prior to July 21, 2011.* An open-end account that is exempt on July 20, 2011 based on an express written commitment to extend credit in excess of $25,000 remains exempt until December 31, 2011 unless:

(i) The creditor takes a security interest in any real property, or in personal property used or expected to be used as the principal dwelling of the consumer; or

(ii) The creditor reduces the express written commitment to extend credit to $25,000 or less.

* * * * *

■ 3. In Supplement I to part 226:

■ A. Under *Section 226.2—Definitions and Rules of Construction,* under *2(a)(19) Dwelling,* paragraph 3. is revised.

■ B. Under *Section 226.3—Exempt Transactions,* section *3(b) Credit over $25,000 not secured by real property or a dwelling* is revised.

■ C. Under *Section 226.23—Right of Rescission,* under *23(a) Consumer's Right to Rescind,* under *Paragraph 23(a)(1),* paragraph 5. is revised.

The additions and revisions read as follows:

Supplement I to Part 226—Official Staff Interpretations

* * * * *

Subpart A—General

* * * * *

Section 226.2—Definitions and Rules of Construction

* * * * *

2(a)(19) Dwelling.

* * * * *

3. *Relation to exemptions.* Any transaction involving a security interest in a consumer's principal dwelling (as well as in any real property) remains subject to the regulation despite the general exemption in § 226.3(b).

* * * * *

Section 226.3—Exempt Transactions

* * * * *

3(b) Credit over applicable threshold amount.

1. *Threshold amount.* For purposes of § 226.3(b), the threshold amount in effect during a particular period is the amount stated below for that period. The threshold amount is adjusted effective January 1 of each year by any annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W) that was in effect on the preceding June 1. This comment will be amended to provide the threshold amount for the upcoming year after the annual percentage change in the CPI–W that was in effect on June 1 becomes available. Any increase in the threshold amount will be rounded to the nearest $100 increment. For example, if the annual percentage increase in the CPI–W would result in a $950 increase in the threshold amount, the threshold amount will be increased by $1,000. However, if the annual percentage increase in the CPI–W would result in a $949 increase in the threshold amount, the threshold amount will be increased by $900.

i. Prior to July 21, 2011, the threshold amount is $25,000.

ii. From July 21, 2011 through December 31, 2011, the threshold amount is $50,000.

2. *Open-end credit.*

i. *Qualifying for exemption.* An open-end account is exempt under § 226.3(b) (unless secured by any real property, or by personal property used or expected to be used as the consumer's principal dwelling) if either of the following conditions is met:

A. The creditor makes an initial extension of credit at or after account opening that exceeds the threshold amount in effect at the time the initial extension is made. If a creditor makes an initial extension of credit after account opening that does not exceed the threshold amount in effect at the time the extension is made, the creditor must have satisfied all of the applicable requirements of this Part from the date the account was opened (or earlier, if applicable), including but not limited to the requirements of § 226.6 (account-opening disclosures), § 226.7 (periodic statements), § 226.52 (limitations on fees), and § 226.55 (limitations on increasing annual percentages rates, fees, and charges). For example:

(1) Assume that the threshold amount in effect on January 1 is $50,000. On February 1, an account is opened but the creditor does not make an initial extension of credit at that time. On July 1, the creditor makes an initial extension of credit of $60,000. In this circumstance, no requirements of this Part apply to the account.

(2) Assume that the threshold amount in effect on January 1 is $50,000. On February 1, an account is opened but the creditor does not make an initial extension of credit at that time. On July 1, the creditor makes an initial extension of credit of $50,000 or less. In this circumstance, the account is not exempt and the creditor must have satisfied all of the applicable requirements of this Part from the date the account was opened (or earlier, if applicable).

B. The creditor makes a firm written commitment at account opening to extend a total amount of credit in excess of the threshold amount in effect at the time the account is opened with no requirement of additional credit information for any advances on the account (except as permitted from time to time with respect to open-end accounts pursuant to § 226.2(a)(20)).

ii. *Subsequent changes generally.* Subsequent changes to an open-end account or the threshold amount may result in the account no longer qualifying for the exemption in § 226.3(b). In these circumstances, the creditor must begin to comply with all of the applicable requirements of this Part within a reasonable period of time after the account ceases to be exempt. Once an account ceases to be exempt, the requirements of this Part apply to any balances on the account. The creditor, however, is not required to comply with the requirements of this Part with respect to the period of time during which the account was exempt. For example, if an open-end credit account ceases to be exempt, the creditor must within a reasonable period of time provide the disclosures required by § 226.6 reflecting the current terms of the account and begin to provide periodic statements consistent with § 226.7. However, the creditor is not required to disclose fees or charges imposed while the account was exempt. Furthermore, if the creditor provided disclosures consistent with the requirements of this Part while the account was exempt, it is not required to provide disclosures required by § 226.6 reflecting the current terms of the account. See also comment 3(b)–4.

iii. *Subsequent changes when exemption is based on initial extension of credit.* If a creditor makes an initial extension of credit that exceeds the threshold amount in effect at that time, the open-end account remains exempt under § 226.3(b) regardless of a subsequent increase in the threshold amount, including an increase pursuant to § 226.3(b)(1)(ii) as a result of an increase in the CPI–W. Furthermore, in these circumstances, the account remains exempt even if there are no further extensions of credit, subsequent extensions of credit do not exceed the threshold amount, the account balance is subsequently reduced below the threshold amount (such as through repayment of the extension), or the credit limit for the account is subsequently reduced below the threshold amount. However, if the initial extension of credit on an account does

not exceed the threshold amount in effect at the time of the extension, the account is not exempt under § 226.3(b) even if a subsequent extension exceeds the threshold amount or if the account balance later exceeds the threshold amount (for example, due to the subsequent accrual of interest).

iv. *Subsequent changes when exemption is based on firm commitment.*

A. *General.* If a creditor makes a firm written commitment at account opening to extend a total amount of credit that exceeds the threshold amount in effect at that time, the open-end account remains exempt under § 226.3(b) regardless of a subsequent increase in the threshold amount pursuant to § 226.3(b)(1)(ii) as a result of an increase in the CPI–W. However, see comment 3(b)–6 with respect to the increase in the threshold amount from $25,000 to $50,000. If an open-end account is exempt under § 226.3(b) based on a firm commitment to extend credit, the account remains exempt even if the amount of credit actually extended does not exceed the threshold amount. In contrast, if the firm commitment does not exceed the threshold amount at account opening, the account is not exempt under § 226.3(b) even if the account balance later exceeds the threshold amount. In addition, if a creditor reduces a firm commitment, the account ceases to be exempt unless the reduced firm commitment exceeds the threshold amount in effect at the time of the reduction. For example:

(1) Assume that, at account opening in year one, the threshold amount in effect is $50,000 and the account is exempt under § 226.3(b) based on the creditor's firm commitment to extend $55,000 in credit. If during year one the creditor reduces its firm commitment to $53,000, the account remains exempt under § 226.3(b). However, if during year one the creditor reduces its firm commitment to $40,000, the account is no longer exempt under § 226.3(b).

(2) Assume that, at account opening in year one, the threshold amount in effect is $50,000 and the account is exempt under § 226.3(b) based on the creditor's firm commitment to extend $55,000 in credit. If the threshold amount is $56,000 on January 1 of year six as a result of increases in the CPI–W, the account remains exempt. However, if the creditor reduces its firm commitment to $54,000 on July 1 of year six, the account ceases to be exempt under § 226.3(b).

B. *Initial extension of credit.* If an open-end account qualifies for a § 226.3(b) exemption at account opening based on a firm commitment, that account may also subsequently qualify for a § 226.3(b) exemption based on an initial extension of credit. However, that initial extension must be a single advance in excess of the threshold amount in effect at the time the extension is made. In addition, the account must continue to qualify for an exemption based on the firm commitment until the initial extension of credit is made. For example:

(1) Assume that, at account opening in year one, the threshold amount in effect is $50,000 and the account is exempt under § 226.3(b) based on the creditor's firm commitment to extend $55,000 in credit. The account is not used for an extension of credit during year one. On January 1 of year two, the threshold amount is increased to $51,000 pursuant to § 226.3(b)(1)(ii) as a result of an increase in the CPI–W. On July 1 of year two, the consumer uses the account for an initial extension of $52,000. As a result of this extension of credit, the account remains exempt under § 226.3(b) even if, after July 1 of year two, the creditor reduces the firm commitment to $51,000 or less.

(2) Same facts as in paragraph iv.B(1) above except that the consumer uses the account for an initial extension of $30,000 on July 1 of year two and for an extension of $22,000 on July 15 of year two. In these circumstances, the account is not exempt under § 226.3(b) based on the $30,000 initial extension of credit because that extension did not exceed the applicable threshold amount ($51,000), although the account remains exempt based on the firm commitment to extend $55,000 in credit.

(3) Same facts as in paragraph iv.B(1) above except that, on April 1 of year two, the creditor reduces the firm commitment to $50,000, which is below the $51,000 threshold then in effect. Because the account ceases to qualify for a § 226.3(b) exemption on April 1 of year two, the account does not qualify for a § 226.3(b) exemption based on a $52,000 initial extension of credit on July 1 of year two.

3. *Closed-end credit.*

i. *Qualifying for exemption.* A closed-end loan is exempt under § 226.3(b) (unless the extension of credit is secured by any real property, or by personal property used or expected to be used as the consumer's principal dwelling; or is a private education loan as defined in § 226.46(b)(5)), if either of the following conditions is met:

A. The creditor makes an extension of credit at consummation that exceeds the threshold amount in effect at the time of consummation. In these circumstances, the loan remains exempt under § 226.3(b) even if the amount owed is subsequently reduced below the threshold amount (such as through repayment of the loan).

B. The creditor makes a commitment at consummation to extend a total amount of credit in excess of the threshold amount in effect at the time of consummation. In these circumstances, the loan remains exempt under § 226.3(b) even if the total amount of credit extended does not exceed the threshold amount.

ii. *Subsequent changes.* If a creditor makes a closed-end extension of credit or commitment to extend closed-end credit that exceeds the threshold amount in effect at the time of consummation, the closed-end loan remains exempt under § 226.3(b) regardless of a subsequent increase in the threshold amount. However, a closed-end loan is not exempt under § 226.3(b) merely because it is used to satisfy and replace an existing exempt loan, unless the new extension of credit is itself exempt under the applicable threshold amount. For example, assume a closed-end loan that qualified for a § 226.3(b) exemption at consummation in year one is refinanced in year ten and that the new loan amount is less than the threshold amount in effect in year ten. In these circumstances, the creditor must comply with all of the applicable requirements of this Part with respect to the year ten transaction if the original loan is satisfied and replaced by the new loan, which is not exempt under § 226.3(b). See also comment 3(b)–4.

4. *Addition of a security interest in real property or a dwelling after account opening or consummation.*

i. *Open-end credit.* For open-end accounts, if, after account opening, a security interest is taken in any real property, or in personal property used or expected to be used as the consumer's principal dwelling, a previously exempt account ceases to be exempt under § 226.3(b) and the creditor must begin to comply with all of the applicable requirements of this Part within a reasonable period of time. See comment 3(b)–2.ii. If a security interest is taken in the consumer's principal dwelling, the creditor must also give the consumer the right to rescind the security interest consistent with § 226.15.

ii. *Closed-end credit.* For closed-end loans, if, after consummation, a security interest is taken in any real property, or in personal property used or expected to be used as the consumer's principal dwelling, an exempt loan remains exempt under § 226.3(b). However, the addition of a security interest in the consumer's principal dwelling is a transaction for purposes of § 226.23 and the creditor must give the consumer the right to rescind the security interest consistent with that section. See § 226.23(a)(1) and the accompanying commentary. In contrast, if a closed-end loan that is exempt under § 226.3(b) is satisfied and replaced by a loan that is secured by any real property, or by personal property used or expected to be used as the consumer's principal dwelling, the new loan is not exempt under § 226.3(b) and the creditor must comply with all of the applicable requirements of this Part. See comment 3(b)-3.

5. *Application to extensions secured by mobile homes.* Because a mobile home can be a dwelling under § 226.2(a)(19), the exemption in § 226.3(b) does not apply to a credit extension secured by a mobile home that is used or expected to be used as the principal dwelling of the consumer. See comment 3(b)–4.

6. *Transition rule for open-end accounts exempt prior to July 21, 2011.* Section 226.3(b)(2) applies only to open-end accounts opened prior to July 21, 2011. Section 226.3(b)(2) does not apply if a security interest is taken by the creditor in any real property, or in personal property used or expected to be used as the consumer's principal dwelling. If, on July 20, 2011, an open-end account is exempt under § 226.3(b) based on a firm commitment to extend credit in excess of $25,000, the account remains exempt under § 226.3(b)(2) until December 31, 2011 (unless the firm commitment is reduced to $25,000 or less). If the firm commitment is increased on or before December 31, 2011 to an amount in excess of $50,000, the account remains exempt under § 226.3(b)(1) regardless of subsequent increases in the threshold amount as a result of increases in the CPI–W. If the firm commitment is not increased on or before December 31, 2011 to an amount in excess of $50,000, the account ceases to be exempt

under § 226.3(b) based on a firm commitment to extend credit. For example:

i. Assume that, on July 20, 2011, the account is exempt under § 226.3(b) based on the creditor's firm commitment to extend $30,000 in credit. On November 1, 2011, the creditor increases the firm commitment on the account to $55,000. In these circumstances, the account remains exempt under § 226.3(b)(1) regardless of subsequent increases in the threshold amount as a result of increases in the CPI–W.

ii. Same facts as paragraph i. above except, on November 1, 2011, the creditor increases the firm commitment on the account to $40,000. In these circumstances, the account ceases to be exempt under § 226.3(b)(2) after December 31, 2011, and the creditor must begin to comply with the applicable requirements of this Part.

* * * * *

Section 226.23—Right of Rescission

* * * * *

23(a) Consumer's right to rescind Paragraph 23(a)(1).

* * * * *

5. *Addition of a security interest.* Under footnote 47, the addition of a security interest in a consumer's principal dwelling to an existing obligation is rescindable even if the existing obligation is not satisfied and replaced by a new obligation, and even if the existing obligation was previously exempt under § 226.3(b). The right of rescission applies only to the added security interest, however, and not to the original obligation. In those situations, only the § 226.23(b) notice need be delivered, not new material disclosures; the rescission period will begin to run from the delivery of the notice.

* * * * *

By order of the Board of Governors of the Federal Reserve System, March 24, 2011.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 2011–7376 Filed 4–1–11; 8:45 am]

BILLING CODE 6210–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 717 and 748

Fair Credit Reporting Act and Bank Secrecy Act Compliance

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule; technical amendments.

SUMMARY: NCUA is amending its Bank Secrecy Act (BSA) Compliance and Fair Credit Reporting Act (FCRA) regulations involving the Fair and Accurate Credit Transactions Act of 2003 (FACTA) to make minor, non-substantive technical amendments. These technical amendments update citations in these NCUA regulations to conform to the reorganization of the Financial Crimes Enforcement Network, Department of Treasury (FinCEN) BSA regulations.

DATES: *Effective Date:* April 4, 2011.

FOR FURTHER INFORMATION CONTACT: Regina Metz, Staff Attorney, 703–518–6561, or Jennifer Vickers, Trial Attorney, 703–518–6547, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314.

SUPPLEMENTARY INFORMATION: Effective March 1, 2011, FinCEN is reorganizing and moving its existing BSA regulations from 31 CFR part 103 to 31 CFR chapter X. *See* 75 FR 65806, October 26, 2010. NCUA is amending provisions of its FCRA FACTA regulations (12 CFR part 717), including Appendix J to 12 CFR part 717, and BSA Compliance (12 CFR part 748) regulations to make minor, non-substantive technical amendments to conform the citations therein to FinCEN's reorganized BSA regulations.

Description of the Final Rule

NCUA's FCRA FACTA and BSA Compliance regulations currently cite to FinCEN's BSA regulations in 31 CFR part 103. Due to FinCEN's reorganization of its BSA regulations, these citations to 31 CFR part 103 in NCUA's regulations would become obsolete on March 1, 2011. To avoid this, the final rule amends NCUA's FCRA FACTA regulations (12 CFR 717.82(c)(2)(i)(A)), including Appendix J to 12 CFR part 717, Section III(a), and BSA Compliance regulations (12 CFR 748.1(c)(2)(ii) and (iii) and 748.2(a) and (b)(1) and (2)) to comport with FinCEN's reorganized BSA regulations at 31 CFR chapter X.

Administrative Procedure Act

Under 5 U.S.C. 553(b)(B) of the Administrative Procedure Act (APA), an agency may, for good cause, find (and incorporate the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.

This final rule makes minor, non-substantive technical amendments to NCUA's FCRA FACTA and BSA Compliance regulations as described above, to conform certain citations to FinCEN's reorganized BSA regulations. Therefore, NCUA, for good cause, finds that the notice and comment procedures prescribed by the APA are unnecessary because the final rule makes technical amendments to citations without substantive change to the relevant provisions of 12 CFR parts 717 and 748.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) does not apply to a rulemaking where a general notice of proposed rulemaking is not required. See 5 U.S.C. 603 and 604. As noted above under Administrative Procedure Act, NCUA has determined, for good cause, that it is unnecessary to publish a notice of proposed rulemaking for this final rule. Accordingly, the RFA's requirements relating to an initial and final regulatory flexibility analysis do not apply.

Paperwork Reduction Act of 1995

There are no information collection requirements in this final rule.

List of Subjects

12 CFR Part 717

Consumer protection, Credit unions, Fair and accurate credit, Fair credit reporting, Privacy, Reporting and recordkeeping requirements.

12 CFR Part 748

Consumer protection, Credit unions, Crime, Currency, Reporting and recordkeeping requirements, Security measures.

For the reasons discussed in the **SUPPLEMENTARY INFORMATION** section above, 12 CFR part 717 and 12 CFR part 748 are amended as follows:

PART 717—FAIR CREDIT REPORTING

■ 1. The authority citation for part 717 continues to read as follows:

Authority: 12 U.S. C. 1751 *et seq.;* 15 U.S.C. 1681a, 1681b, 1681c, 1681s, 1681s–1, 1681t, 1681w, 6801, and 6805, Pub. L. 108–159, 117 Stat. 1952.

■ 2. Amend § 717.82 by revising paragraph (c)(2)(i)(A) to read as follows:

§ 717.82 Duties of users regarding address discrepancies.

* * * * *

(c) * * *

(2) * * *

(i) * * *

(A) Obtains and uses to verify the consumer's identity in accordance with the requirements of the Customer Identification Program (CIP) rules implementing 31 U.S.C. 5318(l) (31 CFR 1020.220);

* * * * *

■ 3. In Appendix J to part 717, revise Section III, paragraph (a) to read as follows:

Appendix J to Part 717—Interagency Guidelines on Identity Theft Detection, Prevention, and Mitigation

III. Detecting Red Flags

* * * * *

(a) Obtaining identifying information about, and verifying the identity of, a person opening a covered account; for example, using the policies and procedures regarding identification and verification set forth in the Customer Identification Program rules implementing 31 U.S.C. 5318(l) (31 CFR 1020.220); and

* * * * *

PART 748—SECURITY PROGRAM, REPORT OF SUSPECTED CRIMES, SUSPICIOUS TRANSACTIONS, CATASTROPHIC ACTS, AND BANK SECRECY ACT COMPLIANCE

■ 4. The authority citation for part 748 continues to read as follows:

Authority: 12 U.S.C. 1766(a), 1786(Q), 15 U.S.C. 6801 and 6805(b); 31 U.S.C. 5311 and 5318.

■ 5. Amend § 748.1 by revising paragraphs (c)(2)(ii) and (iii) to read as follows:

§ 748.1 Filing of reports.

* * * * *

(c) * * *

(2) * * *

(ii) *Content.* A credit union must complete, fully and accurately, SAR form TDF 90–22.47, Suspicious Activity Report (also known as NCUA Form 2362) in accordance with the form's instructions and 31 CFR 1020.320. A copy of the SAR form may be obtained from the credit union resources section of NCUA's Web site, *http://www.ncua.gov,* or the regulatory section of FinCEN's Web site, *http://www.fincen.gov.* These sites include other useful guidance on SARs, for example, forms and filing instructions, Frequently Asked Questions, and the FFIEC Bank Secrecy Act/Anti-Money Laundering Examination Manual.

(iii) *Compliance.* Failure to file a SAR as required by the form's instructions and 31 CFR 1020.320 may subject the credit union, its officials, employees, and agents to the assessment of civil money penalties or other administrative actions.

* * * * *

■ 6. Amend § 748.2 by revising paragraphs (a) and (b) to read as follows:

§ 748.2 Procedures for monitoring Bank Secrecy Act (BSA) compliance.

(a) *Purpose.* This section is issued to ensure that all federally insured credit unions establish and maintain procedures reasonably designed to assure and monitor compliance with the requirements of subchapter II of chapter 53 of title 31, United States Code, the Financial Recordkeeping and Reporting of Currency and Foreign Transactions Act, and the implementing regulations promulgated under it by the Department of Treasury, 31 CFR chapter X.

(b) *Establishment of a BSA compliance program*—(1) *Program requirement.* Each federally insured credit union shall develop and provide for the continued administration of a program reasonably designed to assure and monitor compliance with the recordkeeping and recording requirements in subchapter II of chapter 53 of title 31, United States Code and implementing regulations issued by the Department of Treasury at 31 CFR chapter X. The compliance program must be written, approved by the credit union's board of directors, and reflected in the credit union's minutes.

(2) *Customer identification program.* Each federally insured credit union is subject to the requirements of 31 U.S.C. 5318(l) and the implementing regulation jointly promulgated by the NCUA and Department of the Treasury at 31 CFR 1020.220, which require a customer identification program to be implemented as part of the BSA compliance program required under this section.

* * * * *

By the National Credit Union Administration Board, this 3rd day of March, 2011.

Mary F. Rupp,

Secretary of the Board.

[FR Doc. 2011–7911 Filed 4–1–11; 8:45 am]

BILLING CODE 7535–01–P

FEDERAL HOUSING FINANCE BOARD

12 CFR Parts 965, 966, 969, and 987

FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1270

RIN 2590–AA36

Federal Home Loan Bank Liabilities

AGENCY: Federal Housing Finance Board, Federal Housing Finance Agency.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Agency (FHFA) is re-organizing and re-adopting existing Federal Housing Finance Board (Finance Board) regulations dealing with consolidated obligations (COs), as well as related regulations addressing other authorized Federal Home Loan Bank (Bank) liabilities and book-entry procedures for COs, as new part 1270 of the FHFA regulations. The final rule amends these regulations to reflect statutory amendments made to section 11(c) of the Federal Home Bank Act (Bank Act) with regard to the issuance of COs. Otherwise, FHFA is re-adopting most of the regulatory provisions addressed in this rulemaking without substantive change.

DATES: This rule will become effective on May 4, 2011.

FOR FURTHER INFORMATION CONTACT: Joseph A. McKenzie, Chief Economist, Federal Home Loan Bank and System Analysis, 202–408–2845, Federal Housing Finance Agency, 1625 Eye Street, NW., Washington, DC 20006; or Thomas E. Joseph, Senior Attorney-Advisor, 202–414–3095, Office of General Counsel, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The telephone number for the Telecommunications Device for the Deaf is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

A. Creation of the Federal Housing Finance Agency and Recent Legislation

Effective July 30, 2008, the Housing and Economic Recovery Act of 2008 (HERA), Public Law 110–289, 122 Stat. 2654, created FHFA as a new independent agency of the Federal Government, and transferred to FHFA the supervisory and oversight responsibilities of the Office of Federal Housing Enterprise Oversight (OFHEO) over the Federal National Mortgage Association, and the Federal Home Loan Mortgage Corporation (collectively, the Enterprises), the oversight responsibilities of the Finance Board over the Banks and the Office of Finance (OF) (which acts as the Banks' fiscal agent) and certain functions of the Department of Housing and Urban Development. *See id.* at section 1101, 122 Stat. 2661–62. FHFA is responsible for ensuring that the Enterprises and the Banks operate in a safe and sound manner, including that they maintain adequate capital and internal controls, that their activities foster liquid, efficient, competitive and resilient national housing finance markets, and that they carry out their public policy missions through authorized activities. *See id.* at section 1102, 122 Stat. 2663–64. The Enterprises, the Banks, and the OF continue to operate under regulations promulgated by OFHEO and the Finance Board until such regulations are superseded by regulations issued by FHFA. *See id.* at sections 1301, 1302, 1311, 1312, 122 Stat. 2794–95, 2797–98.

B. The Bank System Generally

The twelve Banks are instrumentalities of the United States organized under the Federal Home Loan Bank Act (Bank Act).[1] *See* 12 U.S.C. 1423 and 1432(a). The Banks are cooperatives; only members of a Bank may purchase the capital stock of a Bank, and only members or certain eligible housing associates (such as state housing finance agencies) may obtain access to secured loans, known as advances, or other products provided by a Bank. *See* 12 U.S.C. 1426(a)(4), 1430(a), and 1430b. Each Bank is managed by its own board of directors and serves the public interest by enhancing the availability of residential mortgage and community lending credit through its member institutions. *See* 12 U.S.C. 1427. Any eligible institution (generally a federally insured depository institution or state-regulated insurance company) may become a member of a Bank if it satisfies certain criteria and purchases a specified amount of the Bank's capital stock. *See* 12 U.S.C. 1424; 12 CFR part 1263.

C. Consolidated Obligations

COs, consisting of bonds and discount notes, are the principal funding source for the Banks. Although each Bank is primarily liable for the portion of COs corresponding to the proceeds received by that Bank, each Bank is also jointly and severally liable with the other eleven Banks for the payment of principal and interest on all COs. *See* 12 CFR 966.9. In addition to issuing COs, the Banks are authorized to raise funds and incur liabilities by accepting deposits from members, other Banks and instrumentalities of the United States, purchasing Federal funds and entering into repurchase agreements. *See* 12 CFR 965.2.

Prior to June 2000, COs had for many years been issued on behalf of the Banks by the Finance Board, as the Banks' regulator, under authority in section 11(c) of the Bank Act. Until the passage of HERA, section 11(c) of the Bank Act authorized the Banks' regulator to issue bonds which were the joint and several obligations of all the Banks. *See* 12 U.S.C. 1431(c)(2007).

In June 2000, the Finance Board published a final rule which altered how COs were issued and transferred authority for issuance of the Bank COs to the Banks pursuant to authority under section 11(a) of the Bank Act. *See* 65 FR 36290 (June 7, 2000) (*adopting* among other parts 12 CFR parts 966 and 985). Section 11(a) of the Bank Act allows each Bank to issue debt subject to any conditions and requirements established by the Banks' regulator. *See* 12 U.S.C. 1431(a). Under the rules published in June 2000, the Banks were allowed to issue debt subject to requirements that all such debt be the joint and several obligations of all twelve Banks and be issued through the OF as their agent. *See* 12 CFR 966.2(b). The Finance Board retained the option to issue COs itself under section 11(c) of the Bank Act at any point, although it did not do so. *See* 12 CFR 966.2(a).

In 2008, HERA amended section 11 of the Bank Act to remove the authority of the regulator to issue COs and to allow the Banks to issue such debt through OF as the Banks' agent. *See* section 1204(3), Public Law 110–289, 122 Stat. 2786. As a consequence, the Banks are now able to issue COs pursuant to section 11(c) of the Bank Act on which the Banks are jointly and severally liable by statute.[2]

On November 8, 2010, FHFA published a proposed rule that would amend its regulations to reflect the changes to the CO provisions and make other organizational and conforming changes to the rules dealing with COs and Bank liabilities. *See* Proposed Rule: Federal Home Loan Bank Liabilities, 75 FR 68534 (Nov. 8, 2010). FHFA is now adopting these rule changes. These amendments to FHFA regulations, however, will affect neither current operations and processes for issuing COs nor the Banks' joint and several liability for payment of principal and interest on outstanding COs.

D. Considerations of Differences Between the Banks and the Enterprises

Section 1201 of HERA requires the Director, when promulgating regulations relating to the Banks, to consider the following differences between the Banks and the Enterprises: cooperative ownership structure; mission of providing liquidity to members; affordable housing and community development mission; capital structure; and joint and several liability. *See* section 1201 Public Law 110–289, 122 Stat. 2782–83 (*amending* 12 U.S.C. 4513). Section 1201 specifically provides, however, that its requirements shall not apply if the Director is reissuing any regulation, advisory document or examination guidance previously issued by the Finance Board. This rule falls within that exception because FHFA is reissuing previous Finance Board regulations (including the related Finance Board interpretation of its rules with respect to the prohibition on the direct placement of COs), updated only as necessary to conform with statutory changes made by HERA. Nevertheless, as noted in the preamble to the proposed rule, FHFA considered the differences between the Banks and the Enterprises as they relate to the above factors in developing the proposal. 75 FR at 68535. FHFA also requested comments from the public about whether differences related to these factors should have resulted in any revisions to the proposal, but no specific comments were received in response to that request.

II. Analysis of the Final Rule

A. The Proposed Rule

FHFA proposed amending existing regulations previously adopted by the Finance Board that address COs to reflect changes made by HERA to section 11 of the Bank Act. *See* 75 FR at 68536–537. At the same time, FHFA proposed combining the CO regulations with related regulations addressing Banks' authorized sources of funds, deposits from Bank members and book-entry procedures for COs into a single new part 1270 of the FHFA regulations. As proposed, most of these existing Finance Board provisions would have been carried over to new part 1270 without change, other than for certain necessary technical and conforming changes. *Id.*

In the preamble to the proposed rule, FHFA also noted that section 939A of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) requires federal agencies to review regulations that require the use of an assessment of the credit-worthiness of a security or money market instrument, or any references to, or requirements in, such regulations regarding credit ratings issued by nationally recognized statistical rating organizations (NRSROs), and to remove such references or requirements. *See id.* (*citing* section 939A, Public Law 111–203, 124 Stat. 1376, 1887 (July 21, 2010)). FHFA further noted that the Dodd-Frank provision requires the agency to the extent feasible to adopt uniform standards of credit-worthiness in its regulations, taking into account the entities regulated by it and the purpose for which such regulated entities would rely on the credit-worthiness standard. *Id.* Because the

[1] The twelve Banks are located in: Boston, New York, Pittsburgh, Atlanta, Cincinnati, Indianapolis, Chicago, Des Moines, Dallas, Topeka, San Francisco, and Seattle.

[2] As amended by HERA, section 11(c) of the Bank Act provides, in relevant part, that the Office of Finance, as agent for the Banks, may issue consolidated * * * Bank bonds which shall be the joint and several obligations of all the * * * Banks, and shall be secured and be issued upon such terms and conditions as such Office may prescribe. 12 U.S.C. 1431(c).

proposed rule provisions carried over a number of references to or requirements based on credit ratings issued by NRSROs, FHFA requested comments on what credit-worthiness standards could be used in the Bank liability rule, and more generally across its regulations, to replace these references or requirements.

B. Comments

FHFA received five comments on the proposed rule. The comments mainly responded to FHFA's request for information on potential standards to replace regulatory references or requirements that cite credit ratings. Overall, these comments did not address specific provisions in the proposed Bank liabilities rule, or suggest changes to those provisions in proposed part 1270 that referenced credit ratings. Instead, the comments identified and discussed broader principles that FHFA should apply in developing new credit-worthiness standards for its regulations more generally.

FHFA has considered these comments. However, given the requirements in section 939A of Dodd-Frank that the agency adopt uniform standards of credit-worthiness across its regulations to the extent feasible, FHFA recently issued an advance notice of proposed rulemaking and request for comment (ANPR) that sought comments on a wider range of issues related to implementation of section 939A of the Dodd-Frank Act than had been raised as part of the Bank liabilities proposed rulemaking. *See* Advance Notice of Proposed Rulemaking: Alternatives to Use of Credit Ratings in Regulations Governing the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation and the Federal Home Loan Banks, 76 FR 5292 (Jan. 31, 2011). Rather than make changes at this time to proposed provisions in part 1270 that continue to reference specific credit rating requirements, FHFA has determined to carry over these part 1270 provisions as proposed on a temporary basis, pending completion of the ANPR process. FHFA believes that this approach will best allow it to implement the Dodd-Frank requirements that it adopt uniform standards of credit-worthiness in its regulations while not further delaying amending the Bank liability regulations to conform to statutory changes made by HERA in 2008.

FHFA, however, will propose changes to relevant part 1270 provisions as well as to other regulations as part of a future rulemaking or rulemakings designed to remove references to, or requirements based on, specific credit ratings, as required by the Dodd-Frank Act. FHFA will consider the relevant comments received on the Bank liabilities rules along with any additional comments received on the ANPR in developing any proposed amendments needed to define and implement new uniform credit-worthiness standards in its regulations.

In addition to the comments addressing credit-worthiness standards, one comment stated that the meaning of the phrase "joint and several liability" was unclear. However, § 1270.10, as proposed, carried over a long-standing Finance Board provision that addressed joint and several liability and implemented the Banks' collective responsibility for payment on all COs. As this provision makes clear, each Bank individually and collectively has an obligation to make full and timely payment on all COs and to give priority for the payment of COs over the redemption of the stock of, or of any payment to, shareholders. Thus, FHFA believes the concept of "joint and several liability" was adequately addressed by the proposed rule language, and no changes to the proposal are necessary with regard to this point.

Thus, after considering the comments, FHFA has decided to adopt part 1270, as proposed, without making any substantive changes.

C. Analysis of the Final Rule

The main purpose for this rulemaking is to update Finance Board regulations to reflect amendments made by HERA to section 11 of the Bank Act with regard to Bank authority to issue COs and to combine certain parts of the former Finance Board regulations into new part 1270. 75 FR at 68535. As already discussed, because the Finance Board had previously delegated responsibility to the Banks themselves to issue COs in 2000, the changes made by HERA to section 11 of the Bank Act—or the related regulatory amendments now being adopted—do not alter the current processes or practices for issuing COs. Otherwise, as FHFA noted when it proposed new part 1270, most of the provisions in new part 1270 are being carried over from existing regulations, without substantive change. *Id.*

Subpart A of Part 1270

As adopted, the final rule will consolidate relevant definitions from parts 965, 966, 969 and 987 of the Finance Board regulations into subpart A of part 1270. To the extent necessary, relevant definitions from part 900 of the Finance Board regulations are also being incorporated into this subpart.[3] FHFA is not altering the definitions from those proposed in November 2010. *See* 75 FR at 68535–536.

Therefore, FHFA is adopting a definition in § 1270.1 for "consolidated obligations" that varies slightly from the one that had been set forth in part 900 of the Finance Board regulations. The new definition reflects the amendments made by HERA to section 11 of the Bank Act while recognizing that some outstanding COs may have been issued by the Finance Board under the prior statutory provisions. *Id.* This definition is the same as one FHFA adopted in other regulations. *See, e.g.,* 12 CFR 1229.1. FHFA is also adopting the proposed definition for the "Office of Finance." As explained in the preamble of the proposed rule, this definition is based on one that previously had been set forth in part 987 of the Finance Board regulations concerning book-entry procedures but has been somewhat modified because a reference to the OF in part 1270 could be made in circumstances, or to address OF duties, other than those related to book-entry procedures. *See* 75 FR at 68535–536.

Subpart B of Part 1270

Subpart B of part 1270 combines provisions now found in the Finance Board regulations part 965, Sources of Funds, and part 969, Deposits. In this respect, § 965.2 of the Finance Board regulations is being relocated to new § 1270.2, and § 1270.3 combines in a single section the authorizations and requirements that previously had been found in § 965.3 and § 969.2 of the Finance Board regulations. No substantive changes are being made to any of the previous Finance Board regulations that will be carried over to subpart B of part 1270.

Subpart C of Part 1270

Subpart C of part 1270 incorporates § 966.2 through § 966.10 of the Finance Board regulations, addressing COs, as new §§ 1270.4 through 1270.11.[4] FHFA

[3] Definitions contained in part 900 apply to all Finance Board regulations but would not apply to part 1270 of the FHFA regulations. *See* 12 CFR part 900. No substantive changes are being made to most of these definitions. Included in the definitions being carried over from part 900 of the Finance Board regulations is one for "SBIC." FHFA inadvertently failed to include a definition for "SBIC" in proposed § 1270.1, but the definition being adopted here is exactly the same as the one that had been in part 900 of the Finance Board rules and that had long been applicable to the relevant provisions that are being adopted in the new part 1270 rules.

[4] As already noted, relevant definitions previously found in § 966.1 of the Finance Board

is not amending most of these provisions in any substantive fashion.

As it proposed, however, FHFA is amending language now found in § 1270.4, which addresses issuance of COs, to reflect the amendments made by HERA to section 11(c) of the Bank Act. As such, FHFA is removing provisions of the former § 966.2(a) that had reserved to the Banks' regulator the right to issue COs. Similarly, § 1270.4(a), as adopted, provides that the Banks shall issue COs pursuant to authority in section 11(c) of the Bank Act, rather than under section 11(a) of the Bank Act, as had been stated in § 966.2(b) of the Finance Board rules. Certain other changes made to language that had been in the old Finance Board regulations are editorial or are technical and conforming in nature, given amendments made by HERA to the Bank Act. *See* 75 FR at 68536.

Section 1270.4(a) as adopted continues to require the Banks to issue COs subject to the provisions of part 1270 and any other relevant rules, regulations, terms, and conditions as the FHFA Director may prescribe. This provision also makes clear that the Banks remain jointly and severally liable on all COs. The negative pledge requirement previously found in § 966.2(c) of the Finance Board regulations is being carried over without substantive change as new § 1270.4(b). The final rule also removes, as unnecessary, the provision previously found in § 966.4(b) that referred to consolidated notes. *See* 12 CFR 966.4(b). This change has no effect on the Banks' authority to issue COs. Prior § 966.4(a), which provided that all COs be issued in *pari passu,* is being re-adopted as new § 1270.4(a)(3).

Finally, FHFA is carrying over as § 1270.9(c) the prohibition on the direct placement of COs previously found in § 966.8(c). As it explained in proposing the part 1270 rules, FHFA is amending the language in § 1270.9(c) to incorporate the Finance Board's Regulatory Interpretation 2005–RI–01, which clarified that the Banks could not purchase COs as part of an initial issuance regardless of whether the purchase was directly from the OF or indirectly from one of the firms that formed OF's approved underwriter network.[5] *See* 75 FR at 68536 (*citing* Regulatory Interpretation 2005–RI–01 (Mar. 30, 2005)). As a result, the Finance Board's previous regulatory interpretation on this issue is hereby rescinded as of the effective date of this rule.

Subpart D of Part 1270

FHFA is moving regulations governing book-entry procedures for COs previously found in § 987.2 through § 987.10 of the Finance Board rules to new subpart D of part 1270 as §§ 1270.12 through 1270.20.[6] Any changes being adopted to these provisions are technical and conforming in nature, such as amendments to remove and update references to the Finance Board and to make other changes made necessary by the transfer and combination of these regulations into new part 1270. FHFA is not making any substantive amendments to these provisions.

III. Paperwork Reduction Act

The final rule does not contain any collections of information pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Therefore, FHFA has not submitted any information to the Office of Management and Budget for review.

IV. Regulatory Flexibility Act

The final rule applies only to the Banks, which do not come within the meaning of small entities as defined in the Regulatory Flexibility Act (RFA). *See* 5 U.S.C. 601(6). Therefore in accordance with section 605(b) of the RFA, FHFA certifies that this final rule will not have significant economic impact on a substantial number of small entities.

List of Subjects

12 CFR Parts 965, 969

Federal home loan banks.

12 CFR Part 966

Federal home loan banks, Government securities.

12 CFR Part 987

Accounting, Government securities.

12 CFR Part 1270

Accounting, Federal home loan banks, Government securities.

Authority and Issuance

Accordingly, for reasons stated in the preamble and under the authority of 12 U.S.C. 1431, 1432, 1435, 4511, 4512, 4513, and 4526, FHFA is amending subchapters H and K of chapter IX and subchapter D of chapter XII of title 12 of the Code of Federal Regulations as follows:

CHAPTER IX—FEDERAL HOUSING FINANCE BOARD

SUBCHAPTER H—FEDERAL HOME LOAN BANK LIABILITIES

PART 965—[REMOVED]

■ 1. Remove part 965.

PART 966—[REMOVED]

■ 2. Remove part 966.

PART 969—[REMOVED]

■ 3. Remove part 969.

SUBCHAPTER K—OFFICE OF FINANCE

PART 987—[REMOVED]

■ 4. Remove part 987.

CHAPTER XII—FEDERAL HOUSING FINANCE AGENCY

SUBCHAPTER D—FEDERAL HOME LOAN BANKS

■ 5. Add part 1270 to subchapter D to read as follows:

PART 1270—LIABILITIES

Subpart A—Definitions

Sec.

Subpart B—Sources of Funds

Subpart C—Consolidated Obligations

Subpart D—Book-Entry Procedure for Consolidated Obligations

regulations are incorporated in subpart A of part 1270.

[5] As FHFA noted when it proposed the new language for § 1270.9(c), the adoption of § 1270.9(c) will not affect the validity of the waiver of this restriction issued by the Finance Board in December 2005 to allow, subject to certain conditions, the direct placement of COs with a Bank when necessary to assure that the Federal Reserve Bank of New York has sufficient funds to pay all principal and interest that come due on a given day on COs or on a portion of COs. *See* Fed. Hsing, Fin. Brd. Res. 2005–22 (Dec. 14, 2005). *See also* 75 FR at 68536, n.4.

[6] As already noted, relevant definitions previously found in § 987.1 of the Finance Board regulations are incorporated in subpart A of part 1270.

Authority: 12 U.S.C. 1431, 1432, 1435, 4511, 4512, 4513, and 4526.

Subpart A—Definitions

§ 1270.1 Definitions.

As used in this part, unless the context otherwise requires or indicates:

Adverse Claim means a claim that a claimant has a property interest in a Book-entry consolidated obligation and that it is a violation of the rights of the claimant for another Person to hold, transfer, or deal with the Security.

Bank, written in title case, means a Federal Home Loan Bank established under section 12 of the Bank Act.

Bank Act means the Federal Home Loan Bank Act, as amended (12 U.S.C. 1421 through 1449).

Book-entry consolidated obligation means a consolidated obligation maintained in the book-entry system of the Federal Reserve Banks.

Consolidated obligation means any bond, debenture or note on which the Banks are jointly and severally liable and which was issued under section 11 of the Bank Act (12 U.S.C. 1431) and in accordance with any implementing regulations, whether or not such instrument was originally issued jointly by the Banks or by the Federal Housing Finance Board on behalf of the Banks.

Deposits in banks or trust companies means:

(1) A deposit in another Bank;

(2) A demand account in a Federal Reserve Bank;

(3) A deposit in, or a sale of Federal funds to:

(i) An insured depository institution, as defined in section 2(9)(A) of the Bank Act (12 U.S.C. 1422(9)(A)), that is designated by a Bank's board of directors;

(ii) A trust company that is a member of the Federal Reserve System or insured by the FDIC, and is designated by a Bank's board of directors; or

(iii) A U.S. branch or agency of a foreign bank, as defined in the International Banking Act of 1978, as amended (12 U.S.C. 3101 *et seq.*), that is subject to the supervision of the Federal Reserve Board, and is designated by a Bank's board of directors.

Director, written in title case, means the Director of FHFA or his or her designee.

Entitlement Holder means a Person or a Bank to whose account an interest in a Book-entry consolidated obligation is credited on the records of a Securities Intermediary.

Federal Reserve Bank means a Federal Reserve Bank or branch, acting as fiscal agent for the Office of Finance, unless otherwise indicated.

Federal Reserve Bank Operating Circular means the publication issued by each Federal Reserve Bank that sets forth the terms and conditions under which the Federal Reserve Bank maintains Book-entry Securities accounts and transfers Book-entry Securities.

Federal Reserve Board means the Board of Governors of the Federal Reserve System.

FHFA means the Federal Housing Finance Agency.

Funds account means a reserve and/or clearing account at a Federal Reserve Bank to which debits or credits are posted for transfers against payment, Book-entry Securities transaction fees, or principal and interest payments.

Non-complying Bank means a Bank that has failed to provide the liquidity certification as required under § 1270.10(b)(1).

NRSRO means a credit rating organization registered with the Securities and Exchange Commission as a nationally recognized statistical rating organization.

Office of Finance means the Office of Finance, a joint office of the Banks established under part 1273 of this chapter and referenced in the Bank Act and the Safety and Soundness Act, including the Office of Finance acting as agent of the Banks in all matters relating to the issuance of Book-entry consolidated obligations and in the performance of all other necessary and proper functions relating to Book-entry consolidated obligations, including the payment of principal and interest due thereon.

Participant means a Person or a Bank that maintains a Participant's Securities Account with a Federal Reserve Bank.

Participant's Securities Account means an account in the name of a Participant at a Federal Reserve Bank to which Book-entry consolidated obligations held for a Participant are or may be credited.

Person means and includes an individual, corporation, company, governmental entity, association, firm, partnership, trust, estate, representative, and any other similar organization, but does not mean or include a Bank, the Director, FHFA, the Office of Finance, the United States, or a Federal Reserve Bank.

Repurchase agreement means an agreement in which a Bank sells securities and simultaneously agrees to repurchase those securities or similar securities at an agreed upon price, with or without a stated time for repurchase.

Revised Article 8 means Uniform Commercial Code, Revised Article 8, Investment Securities (with Conforming and Miscellaneous Amendments to Articles 1, 3, 4, 5, 9, and 10) 1994 Official Text. Copies of this publication are available from the Executive Office of the American Law Institute, 4025 Chestnut Street, Philadelphia, PA 19104, and the National Conference of Commissioners on Uniform State Laws, 676 North St. Clair Street, Suite 1700, Chicago, IL 60611.

Safety and Soundness Act means the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501 *et seq.*) as amended.

SBIC means a small business investment company formed pursuant to section 301 of the Small Business Investment Act (15 U.S.C. 681).

Securities Intermediary means:

(1) A Person that is registered as a "clearing agency" under the Federal securities laws; a Federal Reserve Bank; any other person that provides clearance or settlement services with respect to a Book-entry consolidated obligation that would require it to register as a clearing agency under the Federal securities laws but for an exclusion or exemption from the registration requirement, if its activities as a clearing corporation, including promulgation of rules, are subject to regulation by a Federal or State governmental authority; or (2) A Person (other than an individual, unless such individual is registered as a broker or dealer under the Federal securities laws), including a bank or broker, that in the ordinary course of its business maintains securities accounts for others and is acting in that capacity.

Security Entitlement means the rights and property interest of an Entitlement Holder with respect to a Book-entry consolidated obligation.

Transfer Message means an instruction of a Participant to a Federal Reserve Bank to effect a transfer of a Book-entry consolidated obligation, as set forth in Federal Reserve Bank Operating Circulars.

Subpart B—Sources of Funds

§ 1270.2 Authorized liabilities.

As a source of funds for business operations, each Bank is authorized to incur liabilities by:

(a) Accepting proceeds from the issuance of consolidated obligations issued in accordance with this part;

(b) Accepting time or demand deposits from members, other Banks or instrumentalities of the United States, and cash accounts from associates or members pursuant to §§ 1266.17(b)(2)(i)(B), 1266.17(d) and 1269.4(a)(1) of this chapter, or § 1270.3 of this part, or from other institutions for which the Bank is providing correspondent services pursuant to section 11(e) of the Bank Act (12 U.S.C. 1431(e));

(c) Purchasing Federal funds; and

(d) Entering into repurchase agreements.

§ 1270.3 Deposits from members.

(a) Banks may accept demand and time deposits from members, reserving the right to require notice of intention to withdraw any part of time deposits. Rates of interest paid on all deposits shall be set by the Bank's board of directors (or, between regular meetings thereof, by a committee of directors selected by the board) or by the Bank President, if so authorized by the board. Unless otherwise specified by the board, a Bank President may delegate to any officer or employee of the Bank any authority he possesses under this section.

(b) Each Bank shall at all times have at least an amount equal to the current deposits received from its members invested in:

(1) Obligations of the United States;

(2) Deposits in banks or trust companies; or

(3) Advances with a remaining maturity not to exceed five years that are made to members in conformity with part 1266 of this chapter.

Subpart C—Consolidated Obligations

§ 1270.4 Issuance of consolidated obligations.

(a) *Consolidated obligations issued by the Banks*—(1) Subject to the provisions of this part and such other rules, regulations, terms, and conditions as the Director may prescribe, the Banks may issue joint debt under section 11(c) of the Bank Act (12 U.S.C. 1431(c)), which shall be consolidated obligations, on which the Banks shall be jointly and severally liable in accordance with § 1270.10 of this part.

(2) Consolidated obligations shall be issued only through the Office of Finance, as agent of the Banks pursuant to this part and part 1273 of this chapter.

(3) All consolidated obligations shall be issued in *pari passu.*

(b) *Negative pledge requirement.* Each Bank shall at all times maintain assets described in paragraphs (b)(1) through (b)(6) of this section free from any lien or pledge, in an amount at least equal to a *pro rata* share of the total amount of currently outstanding consolidated obligations and equal to such Bank's participation in all such consolidated obligations outstanding, provided that any assets that are subject to a lien or pledge for the benefit of the holders of any issue of consolidated obligations shall be treated as if they were assets free from any lien or pledge for purposes of compliance with this paragraph (b). Eligible assets are:

(1) Cash;

(2) Obligations of or fully guaranteed by the United States;

(3) Secured advances;

(4) Mortgages as to which one or more Banks have any guaranty or insurance, or commitment therefor, by the United States or any agency thereof;

(5) Investments described in section 16(a) of the Bank Act (12 U.S.C. 1436(a)); and

(6) Other securities that have been assigned a rating or assessment by an NRSRO that is equivalent to or higher than the rating or assessment assigned by that NRSRO to consolidated obligations outstanding.

§ 1270.5 Leverage limit and credit rating requirements.

(a) *Bank leverage*—(1) Except as provided in paragraph (a)(2) of this section, the total assets of any Bank that is not subject to the capital requirements set forth in part 932 of this title shall not exceed 21 times the total of paid-in capital stock, retained earnings, and reserves (excluding loss reserves and liquidity reserves for deposits pursuant to section 11(g) of the Bank Act (12 U.S.C. 1431(g)) of that Bank.

(2) The aggregate amount of assets of any Bank that is not subject to the capital requirements set forth in part 932 of this title may be up to 25 times the total paid-in capital stock, retained earnings, and reserves of that Bank, provided that non-mortgage assets, after deducting the amount of deposits and capital, do not exceed 11 percent of such total assets. For the purposes of this section, the amount of non-mortgage assets equals total assets after deduction of:

(i) Advances;

(ii) Acquired member assets, including all United States government-insured or guaranteed whole single-family or multi-family residential mortgage loans;

(iii) Standby letters of credit;

(iv) Intermediary derivative contracts;

(v) Debt or equity investments:

(A) That primarily benefit households having a targeted income level, a significant proportion of which must benefit households with incomes at or below 80 percent of area median income, or areas targeted for redevelopment by local, state, tribal or Federal government (including Federal Empowerment Zones and Enterprise and Champion Communities), by providing or supporting one or more of the following activities:

(*1*) Housing;

(*2*) Economic development;

(*3*) Community services;

(*4*) Permanent jobs; or

(*5*) Area revitalization or stabilization;

(B) In the case of mortgage- or asset-backed securities, the acquisition of which would expand liquidity for loans that are not otherwise adequately provided by the private sector and do not have a readily available or well established secondary market; and

(C) That involve one or more members or housing associates in a manner, financial or otherwise, and to a degree to be determined by the Bank;

(vi) Investments in SBICs, where one or more members or housing associates of the Bank also make a material investment in the same activity;

(vii) SBIC debentures, the short term tranche of SBIC securities, or other debentures that are guaranteed by the Small Business Administration under title III of the Small Business Investment Act of 1958, as amended (15 U.S.C. 681 *et seq.*);

(viii) Section 108 Interim Notes and Participation Certificates guaranteed by the Department of Housing and Urban Development under section 108 of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5308);

(ix) Investments and obligations issued or guaranteed under the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*).

(x) Securities representing an interest in pools of mortgages (MBS) issued, guaranteed, or fully insured by the Government National Mortgage Association (Ginnie Mae), the Federal Home Loan Mortgage Corporation (Freddie Mac), or the Federal National Mortgage Association (Fannie Mae), or Collateralized Mortgage Obligations (CMOs), including Real Estate Mortgage Investment Conduits (REMICs), backed by such securities;

(xi) Other MBS, CMOs, and REMICs rated in the highest rating category by an NRSRO;

(xii) Asset-backed securities collateralized by manufactured housing loans or home equity loans and rated in the highest rating category by an NRSRO; and

(xiii) Marketable direct obligations of state or local government units or agencies, rated in one of the two highest rating categories by an NRSRO, where the purchase of such obligations by a Bank provides to the issuer the customized terms, necessary liquidity, or favorable pricing required to generate needed funding for housing or community development.

(b) *Credit ratings*—(1) The Banks, collectively, shall obtain from an NRSRO and, at all times, maintain a current credit rating on the Banks' consolidated obligations.

(2) Each Bank shall operate in such a manner and take any actions necessary, including without limitation reducing Bank leverage, to ensure that the Banks' consolidated obligations receive and continue to receive the highest credit rating from any NRSRO by which the consolidated obligations have then been rated.

(c) *Individual Bank credit rating.* Each Bank shall operate in such a manner and take any actions necessary to ensure that the Bank has and maintains an individual issuer credit rating of at least the second highest credit rating from any NRSRO providing a rating, where such rating is a meaningful measure of the individual Bank's financial strength and stability, and is updated at least annually by an NRSRO, or more frequently as required by FHFA, to reflect any material changes in the condition of the Bank.

§ 1270.6 Transactions in consolidated obligations.

The general regulations of the Department of the Treasury now or hereafter in force governing transactions in United States securities, except 31 CFR part 357 regarding book-entry procedure, are hereby incorporated into this subpart C of this part, so far as applicable and as necessarily modified to relate to consolidated obligations, as the regulations of FHFA for similar transactions on consolidated obligations. The book-entry procedure for consolidated obligations is contained in subpart D of this part.

§ 1270.7 Lost, stolen, destroyed, mutilated or defaced consolidated obligations.

United States statutes and regulations of the Department of the Treasury now or hereafter in force governing relief on account of the loss, theft, destruction, mutilation or defacement of United States securities, so far as applicable and as necessarily modified to relate to consolidated obligations, are hereby adopted as the regulations of FHFA for the issuance of substitute consolidated obligations or the payment of lost, stolen, destroyed, mutilated or defaced consolidated obligations.

§ 1270.8 Administrative provision.

The Secretary of the Treasury or the Acting Secretary of the Treasury is hereby authorized and empowered, as the agent of FHFA and the Banks, to administer §§ 1270.6 and 1270.7, and to delegate such authority at their discretion to other officers, employees, and agents of the Department of the Treasury. Any such regulations may be waived on behalf of FHFA and the Banks by the Secretary of the Treasury, the Acting Secretary of the Treasury, or by an officer of the Department of the Treasury authorized to waive similar regulations with respect to United States securities, but only in any particular case in which a similar regulation with respect to United States securities would be waived. The terms "securities" and "bonds" as used in this section shall, unless the context otherwise requires, include and apply to coupons and interim certificates.

§ 1270.9 Conditions for issuance of consolidated obligations.

(a) The Office of Finance board of directors shall authorize the offering for current and forward settlement (up to 12 months) or the reopening of consolidated obligations, as necessary, and authorize the maturities, rates of interest, terms and conditions thereof, subject to the provisions of 31 U.S.C. 9108.

(b) Consolidated obligations may be offered for sale only to the extent that Banks are committed to take the proceeds.

(c) Consolidated obligations shall not be purchased by any Bank as part of an initial issuance whether such consolidated obligation is purchased directly from the Office of Finance or indirectly from an underwriter.

(d) If the Banks issue consolidated obligations denominated in a currency other than U.S. Dollars or linked to equity or commodity prices, then any Bank accepting proceeds from those consolidated obligations shall meet the following requirements with regard to such consolidated obligations:

(1) The relevant foreign exchange, equity price or commodity price risks associated with the consolidated obligation must be hedged in accordance with § 956.6 of this title;

(2) If there is a default on the part of a counterparty to a contract hedging the foreign exchange, equity or commodity price risk associated with a consolidated obligation, the Bank shall enter into a replacement contract in a timely manner and as soon as market conditions permit.

§ 1270.10 Joint and several liability.

(a) *In general*—(1) Each and every Bank, individually and collectively, has an obligation to make full and timely payment of all principal and interest on consolidated obligations when due.

(2) Each and every Bank, individually and collectively, shall ensure that the timely payment of principal and interest on all consolidated obligations is given priority over, and is paid in full in advance of, any payment to or redemption of shares from any shareholder.

(3) The provisions of this part shall not limit, restrict or otherwise diminish, in any manner, the joint and several liability of all of the Banks on any consolidated obligation.

(b) *Certification and reporting*—(1) Before the end of each calendar quarter, and before declaring or paying any dividend for that quarter, the President of each Bank shall certify in writing to FHFA that, based on known current facts and financial information, the Bank will remain in compliance with the liquidity requirements set forth in section 11(g) of the Act (12 U.S.C. 1431(g)), and any regulations (as the same may be amended, modified or replaced), and will remain capable of making full and timely payment of all of its current obligations, including direct obligations, coming due during the next quarter.

(2) A Bank shall immediately provide written notice to FHFA if at any time the Bank:

(i) Is unable to provide the certification required by paragraph (b)(1) of this section;

(ii) Projects at any time that it will fail to comply with statutory or regulatory liquidity requirements, or will be unable to timely and fully meet all of its current obligations, including direct obligations, due during the quarter;

(iii) Actually fails to comply with statutory or regulatory liquidity requirements or to timely and fully meet all of its current obligations, including direct obligations, due during the quarter; or

(iv) Negotiates to enter or enters into an agreement with one or more other Banks to obtain financial assistance to meet its current obligations, including

direct obligations, due during the quarter; the notice of which shall be accompanied by a copy of the agreement, which shall be subject to the approval of FHFA.

(c) *Consolidated obligation payment plans*—(1) A Bank promptly shall file a consolidated obligation payment plan for FHFA approval:

(i) If the Bank becomes a non-complying Bank as a result of failing to provide the certification required in paragraph (b)(1) of this section;

(ii) If the Bank becomes a non-complying Bank as a result of being required to provide the notice required pursuant to paragraph (b)(2) of this section, except in the event that a failure to make a principal or interest payment on a consolidated obligation when due was caused solely by a temporary interruption in the Bank's debt servicing operations resulting from an external event such as a natural disaster or a power failure; or

(iii) If FHFA determines that the Bank will cease to be in compliance with the statutory or regulatory liquidity requirements, or will lack the capacity to timely and fully meet all of its current obligations, including direct obligations, due during the quarter.

(2) A consolidated obligation payment plan shall specify the measures the non-complying Bank will undertake to make full and timely payments of all of its current obligations, including direct obligations, due during the applicable quarter.

(3) A non-complying Bank may continue to incur and pay normal operating expenses incurred in the regular course of business (including salaries, benefits, or costs of office space, equipment and related expenses), but shall not incur or pay any extraordinary expenses, or declare, or pay dividends, or redeem any capital stock, until such time as FHFA has approved the Bank's consolidated obligation payment plan or inter-Bank assistance agreement, or ordered another remedy, and all of the non-complying Bank's direct obligations have been paid.

(d) *FHFA payment orders; Obligation to reimburse*—(1) FHFA, in its discretion and notwithstanding any other provision in this section, may at any time order any Bank to make any principal or interest payment due on any consolidated obligation.

(2) To the extent that a Bank makes any payment on any consolidated obligation on behalf of another Bank, the paying Bank shall be entitled to reimbursement from the non-complying Bank, which shall have a corresponding obligation to reimburse the Bank providing assistance, to the extent of such payment and other associated costs (including interest to be determined by FHFA).

(e) *Adjustment of equities*—(1) Any non-complying Bank shall apply its assets to fulfill its direct obligations.

(2) If a Bank is required to meet, or otherwise meets, the direct obligations of another Bank due to a temporary interruption in the latter Bank's debt servicing operations (*e.g.,* in the event of a natural disaster or power failure), the assisting Bank shall have the same right to reimbursement set forth in paragraph (d)(2) of this section.

(3) If FHFA determines that the assets of a non-complying Bank are insufficient to satisfy all of its direct obligations as set forth in paragraph (e)(1) of this section, then FHFA may allocate the outstanding liability among the remaining Banks on a *pro rata* basis in proportion to each Bank's participation in all consolidated obligations outstanding as of the end of the most recent month for which FHFA has data, or otherwise as FHFA may prescribe.

(f) *Reservation of authority.* Nothing in this section shall affect the Director's authority to adjust equities between the Banks in a manner different than the manner described in paragraph (e) of this section, or to take enforcement or other action against any Bank pursuant to the Director's authority under the Safety and Soundness Act or the Bank Act, or otherwise to supervise the Banks and ensure that they are operated in a safe and sound manner.

(g) *No rights created*—(1) Nothing in this part shall create or be deemed to create any rights in any third party.

(2) Payments made by a Bank toward the direct obligations of another Bank are made for the sole purpose of discharging the joint and several liability of the Banks on consolidated obligations.

(3) Compliance, or the failure to comply, with any provision in this section shall not be deemed a default under the terms and conditions of the consolidated obligations.

§ 1270.11 Savings clause.

Any agreements or other instruments entered into in connection with the issuance of consolidated obligations prior to the amendments made to this part shall continue in effect with respect to all consolidated obligations issued under the authority of section 11 of the Bank Act (12 U.S.C. 1431) and pursuant to this part. References to consolidated obligations in such agreements and instruments shall be deemed to refer to all joint and several obligations of the Banks.

Subpart D—Book-Entry Procedure for Consolidated Obligations

§ 1270.12 Law governing rights and obligations of Banks, FHFA, Office of Finance, United States and Federal Reserve Banks; rights of any Person against Banks, FHFA, Office of Finance, United States and Federal Reserve Banks.

(a) Except as provided in paragraph (b) of this section, the rights and obligations of the Banks, FHFA, the Director, the Office of Finance, the United States and the Federal Reserve Banks with respect to: A Book-entry consolidated obligation or Security Entitlement and the operation of the Book-entry system, as it applies to consolidated obligations; and the rights of any Person, including a Participant, against the Banks, FHFA, the Director, the Office of Finance, the United States and the Federal Reserve Banks with respect to: A Book-entry consolidated obligation or Security Entitlement and the operation of the Book-entry system, as it applies to consolidated obligations; are governed solely by regulations of FHFA, including the regulations of this part 1270, the applicable offering notice, applicable procedures established by the Office of Finance, and Federal Reserve Bank Operating Circulars.

(b) A security interest in a Security Entitlement that is in favor of a Federal Reserve Bank from a Participant and that is not recorded on the books of a Federal Reserve Bank pursuant to § 1270.14(c)(1), is governed by the law (not including the conflict-of-law rules) of the jurisdiction where the head office of the Federal Reserve Bank maintaining the Participant's Securities Account is located. A security interest in a Security Entitlement that is in favor of a Federal Reserve Bank from a Person that is not a Participant, and that is not recorded on the books of a Federal Reserve Bank pursuant to § 1270.14(c)(1), is governed by the law determined in the manner specified in § 1270.13.

(c) If the jurisdiction specified in the first sentence of paragraph (b) of this section is a State that has not adopted Revised Article 8, then the law specified in the first sentence of paragraph (b) of this section shall be the law of that State as though Revised Article 8 had been adopted by that State.

§ 1270.13 Law governing other interests.

(a) To the extent not inconsistent with this part 1270, the law (not including the conflict-of-law rules) of a Securities Intermediary's jurisdiction governs:

(1) The acquisition of a Security Entitlement from the Securities Intermediary;

(2) The rights and duties of the Securities Intermediary and Entitlement Holder arising out of a Security Entitlement;

(3) Whether the Securities Intermediary owes any duties to an adverse claimant to a Security Entitlement;

(4) Whether an Adverse Claim can be asserted against a Person who acquires a Security Entitlement from the Securities Intermediary or a Person who purchases a Security Entitlement or interest therein from an Entitlement Holder; and

(5) Except as otherwise provided in paragraph (c) of this section, the perfection, effect of perfection or non-perfection, and priority of a security interest in a Security Entitlement.

(b) The following rules determine a "Securities Intermediary's jurisdiction" for purposes of this section:

(1) If an agreement between the Securities Intermediary and its Entitlement Holder specifies that it is governed by the law of a particular jurisdiction, that jurisdiction is the Securities Intermediary's jurisdiction.

(2) If an agreement between the Securities Intermediary and its Entitlement Holder does not specify the governing law as provided in paragraph (b)(1) of this section, but expressly specifies that the securities account is maintained at an office in a particular jurisdiction, that jurisdiction is the Securities Intermediary's jurisdiction.

(3) If an agreement between the Securities Intermediary and its Entitlement Holder does not specify a jurisdiction as provided in paragraphs (b)(1) or (b)(2) of this section, the Securities Intermediary's jurisdiction is the jurisdiction in which is located the office identified in an account statement as the office serving the Entitlement Holder's account.

(4) If an agreement between the Securities Intermediary and its Entitlement Holder does not specify a jurisdiction as provided in paragraphs (b)(1) or (b)(2) of this section and an account statement does not identify an office serving the Entitlement Holder's account as provided in paragraph (b)(3) of this section, the Securities Intermediary's jurisdiction is the jurisdiction in which is located the chief executive office of the Securities Intermediary.

(c) Notwithstanding the general rule in paragraph (a)(5) of this section, the law (but not the conflict-of-law rules) of the jurisdiction in which the Person creating a security interest is located governs whether and how the security interest may be perfected automatically or by filing a financing statement.

(d) If the jurisdiction specified in paragraph (b) of this section is a State that has not adopted Revised Article 8, then the law for the matters specified in paragraph (a) of this section shall be the law of that State as though Revised Article 8 had been adopted by that State. For purposes of the application of the matters specified in paragraph (a) of this section, the Federal Reserve Bank maintaining the Securities Account is a clearing corporation, and the Participant's interest in a Bank Book-entry Security is a Security Entitlement.

§ 1270.14 Creation of Participant's Security Entitlement; security interests.

(a) A Participant's Security Entitlement is created when a Federal Reserve Bank indicates by book entry that a Book-entry consolidated obligation has been credited to a Participant's Securities Account.

(b) A security interest in a Security Entitlement of a Participant in favor of the United States to secure deposits of public money, including, without limitation, deposits to the Treasury tax and loan accounts, or other security interest in favor of the United States that is required by Federal statute, regulation, or agreement, and that is marked on the books of a Federal Reserve Bank is thereby effected and perfected, and has priority over any other interest in the Securities. Where a security interest in favor of the United States in a Security Entitlement of a Participant is marked on the books of a Federal Reserve Bank, such Federal Reserve Bank may rely, and is protected in relying, exclusively on the order of an authorized representative of the United States directing the transfer of the Security. For purposes of this paragraph (b), an "authorized representative of the United States" is the official designated in the applicable regulations or agreement to which a Federal Reserve Bank is a party, governing the security interest.

(c)(1) The Banks, FHFA, the Director, the Office of Finance, the United States and the Federal Reserve Banks have no obligation to agree to act on behalf of any Person or to recognize the interest of any transferee of a security interest or other limited interest in a Security Entitlement in favor of any Person except to the extent of any specific requirement of Federal law or regulation or to the extent set forth in any specific agreement with the Federal Reserve Bank on whose books the interest of the Participant is recorded. To the extent required by such law or regulation or set forth in an agreement with a Federal Reserve Bank, or the Federal Reserve Bank Operating Circular, a security interest in a Security Entitlement that is in favor of a Federal Reserve Bank or a Person may be created and perfected by a Federal Reserve Bank marking its books to record the security interest. Except as provided in paragraph (b) of this section, a security interest in a Security Entitlement marked on the books of a Federal Reserve Bank shall have priority over any other interest in the Securities.

(2) In addition to the method provided in paragraph (c)(1) of this section, a security interest in a Security Entitlement, including a security interest in favor of a Federal Reserve Bank, may be perfected by any method by which a security interest may be perfected under applicable law as described in § 1270.12(b) or § 1270.13. The perfection, effect of perfection or non-perfection, and priority of a security interest are governed by that applicable law. A security interest in favor of a Federal Reserve Bank shall be treated as a security interest in favor of a clearing corporation in all respects under that law, including with respect to the effect of perfection and priority of the security interest. A Federal Reserve Bank Operating Circular shall be treated as a rule adopted by a clearing corporation for such purposes.

§ 1270.15 Obligations of the Banks and the Office of Finance; no Adverse Claims.

(a) Except in the case of a security interest in favor of the United States or a Federal Reserve Bank or otherwise as provided in § 1270.14(c)(1), for the purposes of this part 1270, the Banks, the Office of Finance and the Federal Reserve Banks shall treat the Participant to whose Securities Account an interest in a Book-entry consolidated obligations has been credited as the person exclusively entitled to issue a Transfer Message, to receive interest and other payments with respect thereof and otherwise to exercise all the rights and powers with respect to the Security, notwithstanding any information or notice to the contrary. Neither the Banks, FHFA, the Director, the Office of Finance, the United States, nor the Federal Reserve Banks are liable to a Person asserting or having an Adverse Claim to a Security Entitlement or to Book-entry consolidated obligations in a Participant's Securities Account, including any such claim arising as a result of the transfer or disposition of a Book-entry consolidated obligation by a Federal Reserve Bank pursuant to a Transfer Message that the Federal

Reserve Bank reasonably believes to be genuine.

(b) The obligation of the Banks and the Office of Finance to make payments of interest and principal with respect to Book-entry consolidated obligations is discharged at the time payment in the appropriate amount is made as follows:

(1) Interest on Book-entry consolidated obligations is either credited by a Federal Reserve Bank to a Funds Account maintained at the Federal Reserve Bank or otherwise paid as directed by the Participant.

(2) Book-entry consolidated obligations are paid, either at maturity or upon redemption, in accordance with their terms by a Federal Reserve Bank withdrawing the securities from the Participant's Securities Account in which they are maintained and by either crediting the amount of the proceeds, including both principal and interest, where applicable, to a Funds Account at the Federal Reserve Bank or otherwise paying such principal and interest as directed by the Participant. No action by the Participant is required in connection with the payment of a Book-entry consolidated obligation, unless otherwise expressly required.

§ 1270.16 Authority of Federal Reserve Banks.

(a) Each Federal Reserve Bank is hereby authorized as fiscal agent of the Office of Finance: To perform functions with respect to the issuance of Book-entry consolidated obligations, in accordance with the terms of the applicable offering notice and with procedures established by the Office of Finance; to service and maintain Book-entry consolidated obligations in accounts established for such purposes; to make payments of principal, interest and redemption premium (if any), as directed by the Office of Finance; to effect transfer of Book-entry consolidated obligations between Participants' Securities Accounts as directed by the Participants; and to perform such other duties as fiscal agent as may be requested by the Office of Finance.

(b) Each Federal Reserve Bank may issue Operating Circulars not inconsistent with this part 1270, governing the details of its handling of Book-entry consolidated obligations, Security Entitlements, and the operation of the Book-entry system under this part 1270.

§ 1270.17 Liability of Banks, FHFA, Office of Finance and Federal Reserve Banks.

The Banks, FHFA, the Director, the Office of Finance and the Federal Reserve Banks may rely on the information provided in a tender, transaction request form, other transaction documentation, or Transfer Message, and are not required to verify the information. Neither the Banks, FHFA, the Director, the Office of Finance, the United States, nor the Federal Reserve Banks shall be liable for any action taken in accordance with the information set out in a tender, transaction request form, other transaction documentation, or Transfer Message, or evidence submitted in support thereof.

§ 1270.18 Additional requirements; notice of attachment for Book-entry consolidated obligations.

(a) *Additional requirements.* In any case or any class of cases arising under the regulations in this part 1270, the Office of Finance may require such additional evidence and a bond of indemnity, with or without surety, as may in its judgment, or in the judgment of the Banks or FHFA, be necessary for the protection of the interests of the Banks, FHFA, the Office of Finance or the United States.

(b) *Notice of attachment.* The interest of a debtor in a Security Entitlement may be reached by a creditor only by legal process upon the Securities Intermediary with whom the debtor's securities account is maintained, except where a Security Entitlement is maintained in the name of a secured party, in which case the debtor's interest may be reached by legal process upon the secured party. The regulations in this part 1270 do not purport to establish whether a Federal Reserve Bank is required to honor an order or other notice of attachment in any particular case or class of cases.

§ 1270.19 Reference to certain Department of Treasury commentary and determinations.

Notwithstanding provisions in § 1270.6 regarding Department of Treasury regulations set forth in 31 CFR part 357:

(a) The Department of Treasury TRADES Commentary (31 CFR part 357, appendix B) addressing the Department of Treasury regulations governing book-entry procedure for Treasury Securities is hereby referenced, so far as applicable and as necessarily modified to relate to Book-entry consolidated obligations, as an interpretive aid to this subpart D of this part.

(b) Determinations of the Department of Treasury regarding whether a State shall be considered to have adopted Revised Article 8 for purposes of 31 CFR part 357, as published in the **Federal Register** or otherwise, shall also apply to this subpart D of this part.

§ 1270.20 Consolidated obligations are not obligations of the United States or guaranteed by the United States.

Consolidated obligations are not obligations of the United States and are not guaranteed by the United States.

Dated: March 28, 2011.

Edward J. DeMarco,

Acting Director, Federal Housing Finance Agency.

[FR Doc. 2011–7832 Filed 4–1–11; 8:45 am]

BILLING CODE 8070–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 120

Small Business Jobs Act: Eligible Loans for 504 Loan Program Debt Refinancing

AGENCY: U.S. Small Business Administration.

ACTION: Announcement of loan eligibility.

SUMMARY: The SBA is issuing this document to allow loans with any maturity date to be eligible for debt refinancing under the Small Business Jobs Act.

DATES: Effective Date: This document is effective April 4, 2011.

FOR FURTHER INFORMATION CONTACT: Andrew B. McConnell, Jr., Office of Financial Assistance, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416; Telephone (202) 205–7238; e-mail: *Andrew.McConnell@sba.gov.*

SUPPLEMENTARY INFORMATION: Under the temporary 504 debt refinancing program authorized by the Small Business Jobs Act (Jobs Act), Public Law 111–240, 124 Stat. 2504, only loans that will mature on or before December 31, 2012, are eligible for this temporary program, unless SBA publishes a Notice in the **Federal Register** extending such date based on its assessment of available resources and market conditions. *See* 13 CFR 120.882(g)(3). SBA established this initial maturity date in order to ensure that those small businesses most in need would have access to the limited resources available in this temporary program. Based on a review of program demand, SBA has determined that it currently has the resources available to accept applications for the refinancing of loans with any maturity date. Effective immediately, such loans will now be eligible for this temporary debt refinancing program if they also meet the other statutory and regulatory requirements.

Authority: 13 CFR part 120.

Grady B. Hedgespeth,

Director, Office of Financial Assistance.

[FR Doc. 2011–7862 Filed 4–1–11; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0302; Directorate Identifier 2011–CE–008–AD; Amendment 39–16650; AD 2011–07–13]

RIN 2120–AA64

Airworthiness Directives; CPAC, Inc. (Type Certificate Formerly Held by Commander Aircraft Corporation, Gulfstream Aerospace Corporation, and Rockwell International) Models 112, 112B, 112TC, 112TCA, 114, 114A, 114B, and 114TC Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD requires an inspection of the elevator spar for cracks and, if any crack is found, either replacement with a serviceable elevator spar that is found free of cracks or repair/modification with an FAA-approved method. This AD also requires reporting to the FAA the results of the inspection. This AD was prompted by reports of a total of nine elevator spar cracks across seven of the affected airplanes, including a crack of 2.35 inches just below the outboard hinge of the right-hand elevator. We are issuing this AD to prevent structural failure of the elevator spar due to such cracking, which could result in separation of the elevator from the airplane with consequent loss of control.

DATES: This AD is effective April 4, 2011.

We must receive comments on this AD by May 19, 2011.

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

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: T.N. Baktha, Senior Aerospace Engineer, Wichita Aircraft Certification Office (ACO), FAA, 1801 Airport Road, Room 100; *phone:* (316) 946–4155; *fax:* (316) 946–4107; *e-mail: t.n.baktha@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The FAA has received a report from CPAC, Inc. describing a crack of 2.35 inches just below the outboard hinge of the right-hand elevator on a CPAC, Inc. Model 114 airplane. The Models 112, 112B, 112TC, 112TCA, 114, 114A, 114B, and 114TC have the same design of the elevator spar and are all part of Type Certificate A12SO. There have been a total of nine elevator spar cracks across seven of these airplanes.

Type Certificate A12SO does not include Models 112A and 115. The Model 112A is a Rockwell "marketing name" for the Model 112. The Model 115 is a Rockwell "marketing name" for the Model 114.

If not corrected, structural failure of the elevator spar could result in separation of the elevator from the airplane with consequent loss of control.

Relevant Service Information

We have included in this AD procedures for removing the elevator and inspecting the forward and aft sides of the right-hand and left-hand elevator forward spar web near and around the outboard hinge area.

FAA's Determination

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

AD Requirements

This AD requires an inspection of the elevator spar for cracks and, if any crack is found, replacement of the elevator spar with a serviceable spar that is found free of cracks or repair/modification with an FAA-approved method. This AD also requires reporting to the FAA of the results of the inspection.

Interim Action

We consider this AD interim action. We are requiring a one-time inspection of the elevator spar with a report to the FAA of the results. We will work with the type certificate holder to evaluate that information to determine repetitive inspection intervals and subsequent terminating action. Based on this evaluation, we may initiate further rulemaking action to address the unsafe condition identified in this AD.

FAA's Justification and Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because structural failure of the elevator spar would result in potential separation of the elevator with consequent loss of control.

Therefore, we find that notice and opportunity for prior public comment are impracticable and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment. However, we invite you to send any written data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number FAA–2011–0302 and Directorate Identifier 2011–CE–008–AD at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

Costs of Compliance

We estimate that this AD affects 773 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection of the elevator spar	8 work-hours × $85 per hour = $680	N/A	$680	$525,640

Currently, there is no FAA-approved repair/modification for a cracked elevator spar. Further flight is prohibited until an FAA-approved repair/modification is submitted to the FAA and FAA-approved. A cracked elevator spar could be replaced with a serviceable one if one is available. The FAA does not have availability and cost information on serviceable elevator spars. Therefore, at this time, the FAA has no way of determining any on-condition costs associated with cracks found in the elevator spar.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2011–07–13 CPAC, Inc. (Type Certificate Formerly Held by Commander Aircraft Corporation, Gulfstream Aerospace Corporation, and Rockwell International): Amendment 39–16650; Docket No. FAA–2011–0302; Directorate Identifier 2011–CE–008–AD.

Effective Date

(a) This AD is effective April 4, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to CPAC, Inc. (type certificate formerly held by Commander Aircraft Corporation, Gulfstream Aerospace Corporation, and Rockwell International) Models 112, 112B, 112TC, 112TCA, 114, 114A, 114B, and 114TC airplanes, all serial numbers, certificated in any category. Type Certificate No. A12SO does not include Models 112A and 115. The Model 112A is a Rockwell "marketing name" for the Model 112. The Model 115 is a Rockwell "marketing name" for the Model 114. Since they are type-certificated as Model 112 and Model 114, this AD is applicable to the Models 112A and 115.

Subject

(d) Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 55, Stabilizers.

Unsafe Condition

(e) This AD was prompted by reports of a total of nine elevator spar cracks across seven of the affected airplanes, including a crack of 2.35 inches just below the outboard hinge of the right-hand elevator. We are issuing this AD to prevent structural failure of the elevator spar due to such cracking, which could result in separation of the elevator from the airplane with consequent loss of control.

Compliance

(f) Comply with this AD within the compliance times specified.

Inspection/Repair

(g) Within the next 5 hours time-in-service after the effective date of this AD, do the following for the left-hand and right-hand elevators:

(1) Disconnect the elevator trim pushrod at the trim tab.

(2) Remove the hinge bolts at the horizontal stabilizer points.

(3) Remove six screws and two bolts at the inboard end of the elevator and remove the elevator.

(4) Remove all fasteners common to the elevator outboard aft end rib, part number (P/N) 44330, and elevator skin, P/N 44323.

(5) Remove the remaining two fasteners common to the elevator outboard aft End rib (P/N 44330) and the elevator spar, P/N 44211.

(6) Remove the elevator aft end rib, P/N 44330, to gain access to the aft side of the elevator spar.

(7) Remove the four bolts, washers, and nuts that secure the outboard elevator hinge, P/N 44285.

(8) Remove elevator hinge, P/N 44285, from the elevator spar.

(9) Clean in and around the location of the outboard bracket on the elevator spar and visually inspect for cracks. Use a 10X magnifier to facilitate the detection of any crack.

(10) If cracks are found, before further flight, do the following:

(i) Either replace the elevator spar with a serviceable spar that is found free of cracks or repair/modify the elevator spar following a procedure approved for this AD by the FAA, Wichita Aircraft Certification Office (ACO); and

(ii) Reassemble the elevator assembly, rebalance the elevator, and reinstall on the

airplane following standard repair practices. Ensure elevator rigging is within tolerance, and that the system operates with ease, smoothness, and positiveness appropriate to its function.

Note: Elevator rigging and rebalancing, torque values, and other general maintenance information can be found in the maintenance manual.

Reporting Requirement

(h) Report the results of the inspection to the FAA, Wichita ACO, FAA, Attn: T.N. Baktha, Senior Aerospace Engineer, 1801 Airport Road, Room 100; *phone:* (316) 946–4155; *fax:* (316) 946–4107; *e-mail: t.n.baktha@faa.gov.* Include the following information:

(1) Airplane model and serial number.

(2) Hours time-in-service at time of inspection.

(3) Annotate any cracking found, including the exact location and length of any cracks.

(4) Any installations, repairs, modifications, etc. that have been done on your airplane in the elevator spar area or that could have affected the elevator spar.

(5) Type of operation primarily flown in.

Paperwork Reduction Act Burden Statement

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

Alternative Methods of Compliance (AMOCs)

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

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

Related Information

(k) For more information about this AD, contact T.N. Baktha, Senior Aerospace Engineer, Wichita ACO, FAA, 1801 Airport Road, Room 100; phone: (316) 946–4186; *fax:* (316) 946–4107; *e-mail: t.n.baktha@faa.gov.*

Issued in Kansas City, Missouri, on March 28, 2011.

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–7729 Filed 4–1–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–1189; Airspace Docket No. 10–AWP–19]

Amendment of Class E Airspace; Taylor, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action will amend Class E airspace at Taylor Airport, Taylor, AZ, to accommodate aircraft using the CAMBO One Departure, and the Area Navigation (RNAV) standard instrument approach procedures at Taylor Airport. This will improve the safety and management of Instrument Flight Rules (IFR) operations at the airport. This action also corrects the airport names to Taylor Airport, and Show Low Regional Airport, respectively. Additionally, the geographic coordinates for Taylor Airport will be adjusted.

DATES: Effective date, 0901 UTC, June 30, 2011. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

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

SUPPLEMENTARY INFORMATION:

History

On January 20, 2011, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend controlled airspace at Taylor, AZ (76 FR 3570). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Subsequent to publication, the FAA found the geographic coordinates for Taylor Airport needed to be adjusted to coincide with the FAA's aeronautical database. This action makes the adjustment. Also, the airport names have been changed: Taylor Municipal Airport to Taylor Airport, and Show Low Municipal Airport to Show Low Regional Airport. With the exception of editorial changes, and the changes described above, this rule is the same as that proposed in the NPRM.

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

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by modifying Class E airspace extending upward from 700 feet above the surface at Taylor Airport, Taylor, AZ, to accommodate IFR aircraft using the CAMBO One Departure, and the RNAV standard instrument approach procedures at the airport. This action is necessary for the safety and management of IFR operations. The geographic coordinates for Taylor Airport will be adjusted to coincide with the FAA's aeronautical database. Also, Taylor Municipal Airport has been renamed Taylor Airport and Show Low Municipal Airport has been renamed Show Low Regional Airport.

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

of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends controlled airspace at Taylor Airport, Taylor, AZ.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

AWP AZ E5 Taylor, AZ [Modified]

Taylor Airport, AZ
(Lat. 34°27′10″ N., long. 110°06′54″ W.)
Show Low Regional Airport, AZ
(Lat. 34°15′56″ N., long. 110°00′20″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Taylor Airport, excluding the portion within the Show Low, AZ, Class E airspace area. That airspace extending upward from 1,200 feet above the surface within an area bounded by lat. 34°27′10″ N., long. 110°06′53″ W.; to lat. 34°32′14″ N., long. 110°14′37″ W.; to lat. 34°37′13″ N., long. 110°09′11″ W.; to lat. 34°52′00″ N., long. 110°28′00″ W.; to lat. 34°54′42″ N., long. 110°25′00″ W.; to lat. 34°39′34″ N., long. 109°45′20″ W.; to lat. 34°24′00″ N., long. 110°01′40″ W.; to point of beginning.

Issued in Seattle, Washington, on March 21, 2011.

Christine Mellon,

Acting Manager, Operations Support Group, Western Service Center.

[FR Doc. 2011–7839 Filed 4–1–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30774 ; Amdt. No. 3418]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective April 4, 2011. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 4, 2011.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Availability—All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit *http://www.nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Harry J. Hodges, Flight Procedure Standards Branch (AFS–420), Flight Technologies and Programs Divisions, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) Telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14 of the Code of Federal Regulations, Part 97 (14 CFR part 97), by establishing, amending, suspending, or revoking SIAPS, Takeoff Minimums and/or ODPS. The complete regulators description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part 97.20. The applicable FAA Forms are FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, and 8260–15B when required by an entry on 8260–15A.

The large number of SIAPs, Takeoff Minimums and ODPs, in addition to their complex nature and the need for a special format make publication in the **Federal Register** expensive and impractical. Furthermore, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their depiction on charts printed by publishers of aeronautical materials. The advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA forms is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAPs and the effective dates of the associated Takeoff Minimums and ODPs. This amendment also identifies the airport and its location, the procedure, and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as contained in the transmittal. Some SIAP and Takeoff Minimums and

textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPS and Takeoff Minimums and ODPS, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPS contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPS and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedures before adopting these SIAPS, Takeoff Minimums and ODPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "significant regulatory action" under Executive Order 12866;(2) is not a "significant rule " under DOT Regulatory Policies and Procedures (44 FR 11034; February 26,1979) ; and (3)does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97:

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC, on March 18, 2011.

John McGraw,

Deputy Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures and/or Takeoff Minimums and/or Obstacle Departure Procedures effective at 0902 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

Effective 5 MAY 2011

Deadhorse, AK, Deadhorse, RNAV (GPS) Y RWY 5, Amdt 1B
Deadhorse, AK, Deadhorse, RNAV (GPS) Y RWY 23, Amdt 1B
Fayetteville/Springdale, AR, Northwest Arkansas Rgnl, ILS OR LOC/DME RWY 17, Orig
Fayetteville/Springdale, AR, Northwest Arkansas Rgnl, ILS OR LOC/DME RWY 35, Orig
Fayetteville/Springdale, AR, Northwest Arkansas Rgnl, RNAV (GPS) RWY 17, Orig
Fayetteville/Springdale, AR, Northwest Arkansas Rgnl, RNAV (GPS) RWY 35, Orig
Fayetteville/Springdale, AR, Northwest Arkansas Rgnl, Takeoff Minimums and Obstacle DP, Amdt 3
Taylor, AZ, Taylor Muni, Takeoff Minimums and Obstacle DP, Amdt 1
Rio Vista, CA, Rio Vista Muni, RNAV (GPS) RWY 25, Amdt 1
Santa Ana, CA, John Wayne Airport-Orange County, NDB RWY 19R, Amdt 1, CANCELLED
Daytona Beach, FL, Daytona Beach Intl, RNAV (GPS) RWY 34, Amdt 2
Tampa, FL, Tampa Executive, RNAV (GPS) RWY 18, Amdt 1
Atlanta, GA, Cobb County-McCollum Field, ILS OR LOC RWY 27, Amdt 4
Atlanta, GA, Cobb County-McCollum Field, RNAV (GPS) RWY 27, Amdt 4
Cochran, GA, Cochran, RNAV (GPS) RWY 11, Amdt 1
Sandersville, GA, Kaolin Field, RNAV (GPS) RWY 13, Amdt 2
Sandersville, GA, Kaolin Field, RNAV (GPS) RWY 31, Amdt 2
Lanai City, HI, Lanai, RNAV (GPS) RWY 3, Orig-A
Algona, IA, Algona Muni, NDB RWY 12, Amdt 6
Algona, IA, Algona Muni, RNAV (GPS) RWY 12, Orig
Algona, IA, Algona Muni, RNAV (GPS) RWY 30, Amdt 1
Algona, IA, Algona Muni, VOR/DME–A, Amdt 7
Carroll, IA, Arthur N Neu, NDB Rwy 31, Amdt 7, CANCELLED
Decorah, IA, Decorah Muni, RNAV (GPS) RWY 11, Orig
Alton/St. Louis, IL, St. Louis Rgnl, ILS OR LOC RWY 29, Amdt 12
Alton/St. Louis, IL, St. Louis Rgnl, LOC BC RWY 11, Amdt 9
Alton/St. Louis, IL, St. Louis Rgnl, NDB RWY 17, Amdt 12
Alton/St. Louis, IL, St. Louis Rgnl, RNAV (GPS) RWY 11, Amdt 2
Alton/St. Louis, IL, St. Louis Rgnl, RNAV (GPS) RWY 17, Amdt 1
Alton/St. Louis, IL, St. Louis Rgnl, RNAV (GPS) RWY 29, Amdt 1
Alton/St. Louis, IL, St. Louis Rgnl, RNAV (GPS) RWY 35, Amdt 1
Alton/St. Louis, IL, St. Louis Rgnl, Takeoff Minimums and Obstacle DP, Amdt 2
Chicago/Prospect Hgts/Wheeling, IL, Chicago Executive, Takeoff Minimums and Obstacle DP, Amdt 3
Logansport, IN, Logansport/Cass County, RNAV (GPS) RWY 9, Amdt 1
Logansport, IN, Logansport/Cass County, RNAV (GPS) RWY 27, Amdt 1
Logansport, IN, Logansport/Cass County, VOR/DME RNAV 27, Amdt 3, CANCELLED
Augusta, ME, Augusta State, GPS RWY 17, Orig-A, CANCELLED
Augusta, ME, Augusta State, RNAV (GPS) RWY 17, Orig
Augusta, ME, Augusta State, VOR RWY 35, Amdt 6
Augusta, ME, Augusta State, VOR/DME RWY 17, Amdt 5
Augusta, ME, Augusta State, VOR/DME–A, Amdt 12
Alpena, MI, Alpena County Rgnl, ILS OR LOC RWY 1, Amdt 9
Ann Arbor, MI, Ann Arbor Muni, RNAV (GPS) RWY 6, Amdt 2
Ann Arbor, MI, Ann Arbor Muni, RNAV (GPS) RWY 24, Amdt 2
Battle Creek, MI, W K Kellogg, ILS OR LOC RWY 23R, Amdt 18
Battle Creek, MI, W K Kellogg, NDB RWY 23R, Amdt 18
Battle Creek, MI, W K Kellogg, RNAV (GPS) RWY 5L, Amdt 1
Battle Creek, MI, W K Kellogg, RNAV (GPS) RWY 23R, Amdt 1
Cheboygan, MI, Cheboygan County, RNAV (GPS) RWY 28, Amdt 1
Cheboygan, MI, Cheboygan County, VOR RWY 10, Amdt 9
Marlette, MI, Marlette, RNAV (GPS) RWY 9, Amdt 1
Marlette, MI, Marlette, RNAV (GPS) RWY 19, Orig
Marlette, MI, Marlette, RNAV (GPS) RWY 27, Amdt 1
Marlette, MI, Marlette, VOR/DME–A, Amdt 6
South Haven, MI, South Haven Area Rgnl, RNAV (GPS) RWY 4, Amdt 1
South Haven, MI, South Haven Area Rgnl, RNAV (GPS) RWY 22, Amdt 1
South Haven, MI, South Haven Area Rgnl, VOR RWY 22, Amdt 11
Hattiesburg, MS, Hattiesburg Bobby L Chain Muni, RNAV (GPS) Y RWY 13, Amdt 2A
Clinton, NC, Clinton-Sampson County, LOC RWY 6, Amdt 3
Clinton, NC, Clinton-Sampson County, RNAV (GPS) RWY 6, Amdt 2
Clinton, NC, Clinton-Sampson County, RNAV (GPS) Y RWY 24, Amdt 1
Clinton, NC, Clinton-Sampson County, RNAV (GPS) Z RWY 24, Orig

Clinton, NC, Clinton-Sampson County, Takeoff Minimums and Obstacle DP, Amdt 2
Clinton, NC, Clinton-Sampson County, VOR/DME–A, Amdt 6
Edenton, NC, Northeastern Rgnl, ILS OR LOC RWY 19, Orig
Edenton, NC, Northeastern Rgnl, LOC RWY 19, Orig, CANCELLED
Edenton, NC, Northeastern Rgnl, RNAV (GPS) RWY 19, Amdt 2
Oakes, ND, Oakes Muni, GPS RWY 30, Orig-A, CANCELLED
Oakes, ND, Oakes Muni, RNAV (GPS) RWY 30, Orig
Oakes, ND, Oakes Muni, Takeoff Minimums and Obstacle DP, Amdt 1
Ogallala, NE, Searle Field, Takeoff Minimums and Obstacle DP, Amdt 4
Scottsbluff, NE, Western Neb, Rgnl/William B. Heilig Field, ILS OR LOC RWY 30, Amdt 10
Wayne, NE, Wayne Muni, Takeoff Minimums and Obstacle DP, Amdt 4
Manville, NJ, Central Jersey Rgnl, RNAV (GPS) RWY 7, Amdt 1
Manville, NJ, Central Jersey Rgnl, RNAV (GPS) RWY 25, Amdt 1
Clayton, NM, Clayton Muni Airpark, Takeoff Minimums and Obstacle DP, Amdt 1
Socorro, NM, Socorro Muni, RNAV (GPS) Z RWY 33, Orig, CANCELLED
Portland, OR, Portland Intl, ILS OR LOC RWY 10L, Amdt 3A
Corry, PA, Corry-Lawrence, Takeoff Minimums and Obstacle DP, Orig-A
Lehighton, PA, Jake Arner Memorial, RNAV (GPS) RWY 8, Amdt 1
Lehighton, PA, Jake Arner Memorial, RNAV (GPS) RWY 26, Amdt 1
Lehighton, PA, Jake Arner Memorial, Takeoff Minimums and Obstacle DP, Amdt 1
Pittsburgh, PA, Pittsburgh Intl, RNAV (RNP) Z RWY 32, Amdt 1A
Eastland, TX, Eastland Muni, RNAV (GPS) RWY 17, Orig
Eastland, TX, Eastland Muni, RNAV (GPS) RWY 35, Amdt 2
Ennis, TX, Ennis Muni, Takeoff Minimums and Obstacle DP, Orig
Ennis, TX, Ennis Muni, VOR/DME–A, Amdt 1
Gladewater, TX, Gladewater Muni, RNAV (GPS) RWY 14, Orig
Gladewater, TX, Gladewater Muni, RNAV (GPS) RWY 32, Orig
Gladewater, TX, Gladewater Muni, VOR/DME RWY 14, Amdt 3
Granbury, TX, Granbury Rgnl, Takeoff Minimums and Obstacle DP, Amdt 2
Houston, TX, Pearland Rgnl, RNAV (GPS) RWY 32, Amdt 3
Junction, TX, Kimble County, Takeoff Minimums and Obstacle DP, Amdt 2
Livingston, TX, Livingston Muni, Takeoff Minimums and Obstacle DP, Amdt 1
Mexia, TX, Mexia-Limestone Co, Takeoff Minimums and Obstacle DP, Orig
San Antonio, TX, San Antonio Intl, RNAV (RNP) Z RWY 3, Orig
San Antonio, TX, San Antonio Intl, RNAV (RNP) Z RWY 12R, Orig
San Antonio, TX, San Antonio Intl, RNAV (RNP) Z RWY 21, Orig
San Antonio, TX, San Antonio Intl, RNAV (RNP) Z RWY 30L, Orig
Sherman-Denison, TX, North Texas Rgnl/Perrin Field, Takeoff Minimums and Obstacle DP, Orig
Tyler, TX, Tyler Pounds Rgnl, ILS or LOC RWY 13, Amdt 20F
Tyler, TX, Tyler Pounds Rgnl, RNAV (GPS) RWY 4, Amdt 1A
Tyler, TX, Tyler Pounds Rgnl, VOR/DME RWY 4, Amdt 3E
Heber, UT, Heber City Muni-Russ McDonald Field, COOLI TWO Graphic DP
Heber, UT, Heber City Muni-Russ McDonald Field, Takeoff Minimums and Obstacle DP, Amdt 2
Pasco, WA, Tri-Cities, RNAV (GPS) Y RWY 3L, Amdt 1A
Pasco, WA, Tri-Cities, RNAV (GPS) Y RWY 12, Amdt 1A
Pasco, WA, Tri-Cities, RNAV (GPS) Y RWY 21R, Amdt 1A
Pasco, WA, Tri-Cities, RNAV (GPS) Y RWY 30, Amdt 2A
Pasco, WA, Tri-Cities, RNAV (RNP) Z RWY 3L, Orig
Pasco, WA, Tri-Cities, RNAV (RNP) Z RWY 12, Orig
Pasco, WA, Tri-Cities, RNAV (RNP) Z RWY 21R, Orig
Pasco, WA, Tri-Cities, RNAV (RNP) Z RWY 30, Orig
Delavan, WI, Lawn Lake, RNAV (GPS) RWY 18, Orig-A, CANCELLED
Delavan, WI, Lawn Lake, RNAV (GPS) RWY 36, Orig, CANCELLED
Delavan, WI, Lawn Lake, Takeoff Minimums and Obstacle DP, Amdt 1, CANCELLED

[FR Doc. 2011–7607 Filed 4–1–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30775; Amdt. No. 3419]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective April 4, 2011. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 4, 2011.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to:*http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Availability—All SIAPs are available online free of charge. Visit nfdc.faa.gov to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Harry J. Hodges, Flight Procedure Standards Branch (AFS–420)Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) *telephone:* (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (FDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference in the

amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of Title 14 of the Code of Federal Regulations.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAP and the corresponding effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP as modified by FDC/P–NOTAMs.

The SIAPs, as modified by FDC P–NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC, on March 18, 2011.

John McGraw,

Deputy Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal regulations, Part 97, 14 CFR part 97, is amended by amending Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

** * * Effective Upon Publication*

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
5–May–11	KS	Iola	Allen County	0/2223	3/1/11	RNAV (GPS) RWY 19, Orig
5–May–11	MA	Marshfield	Marshfield Muni-George Harlow Field.	1/0112	3/9/11	RNAV (GPS) RWY 6, Orig
5–May–11	FL	Tallahassee	Tallahassee Rgnl	1/0113	3/7/11	NDB RWY 36, Amdt 20A
5–May–11	KY	Louisville	Louisville Intl-Standiford Field	1/0278	3/9/11	RNAV (GPS) RWY 29, Orig
5–May–11	NY	Monticello	Sullivan County Intl	1/0345	3/9/11	ILS RWY 15, Amdt 5B
5–May–11	AL	Tuskegee	Moton Field Muni	1/0399	3/8/11	RNAV (GPS) RWY 31, Orig
5–May–11	AL	Tuskegee	Moton Field Muni	1/0400	3/8/11	RNAV (GPS) RWY 13, Orig
5–May–11	NH	Nashua	Boire Field	1/0489	3/14/11	ILS OR LOC RWY 14, Amdt 5B
5–May–11	NJ	Princeton/Rocky Hill	Princeton	1/0506	3/14/11	VOR A, Amdt 7
5–May–11	IN	Bloomington	Bloomington/Monroe County	1/0552	3/16/11	RNAV (GPS) RWY 17, Amdt 1
5–May–11	GA	Madison	Madison Muni	1/0708	3/16/11	GPS RWY 14, Amdt 1A
5–May–11	NC	Winston Salem	Smith Reynolds	1/0861	3/16/11	ILS OR LOC RWY 33, Amdt 29A
5–May–11	IL	Kankakee	Greater Kankakee	1/1311	3/2/11	VOR RWY 22, Amdt 7
5–May–11	NC	Greenville	Pitt-Greenville	1/2023	3/16/11	RNAV (GPS) RWY 2, Orig
5–May–11	DC	Washington	Ronald Reagan Washington National.	1/3370	3/1/11	RNAV (GPS) RWY 33, Orig
5–May–11	KY	Lexington	Blue Grass	1/3518	3/1/11	RNAV (GPS) RWY 22, Amdt 1
5–May–11	CQ	Saipan Island	Francisco C. Ada/Saipan Intl	1/3954	1/26/11	RNAV (GPS) RWY 7, Orig
5–May–11	CQ	Saipan Island	Francisco C. Ada/Saipan Intl	1/3955	1/26/11	RNAV (GPS) RWY 25, Orig
5–May–11	CQ	Saipan Island	Francisco C. Ada/Saipan Intl	1/3956	1/26/11	NDB/DME RWY 25, Amdt 2B
5–May–11	CQ	Saipan Island	Francisco C. Ada/Saipan Intl	1/3957	1/26/11	ILS OR LOC/DME RWY 7, Amdt 5C
5–May–11	CQ	Saipan Island	Francisco C. Ada/Saipan Intl	1/3958	1/26/11	NDB RWY 7, Amdt 5

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
5–May–11	CQ	Saipan Island	Francisco C. Ada/Saipan Intl	1/3959	1/26/11	NDB/DME RWY 7, Amdt 3B
5–May–11	GA	Nashville	Berrien Co	1/4169	3/1/11	GPS RWY 10, Orig-A
5–May–11	AK	Kokhanok	Kokhanok	1/4286	1/27/11	RNAV (GPS) RWY 6, Orig
5–May–11	AK	Kokhanok	Kokhanok	1/4287	1/27/11	RNAV (GPS) RWY 24, Orig
5–May–11	TN	Knoxville	Mc Ghee Tyson	1/4376	3/1/11	ILS OR LOC RWY 5L, Amdt 8A
5–May–11	NY	Binghamton	Greater Binghamton/Edwin A Link Field.	1/4378	3/1/11	ILS RWY 16, Amdt 6C
5–May–11	NJ	Manville	Central Jersey Rgnl	1/4446	3/1/11	VOR A, Amdt 7
5–May–11	OH	Middletown	Middletown Regoinal/Hook Field	1/5662	3/14/11	NDB OR GPS A, Amdt 2C
5–May–11	FL	Tallahassee	Tallahassee Rgnl	1/5755	2/7/11	VOR RWY 18, AMDT 11A
5–May–11	TX	Sherman	Sherman Muni	1/6967	3/1/11	VOR/DME A, Orig-A
5–May–11	GA	Madison	Madison Muni	1/7690	3/16/11	VOR/DME OR GPS A, Amdt 7A
5–May–11	TX	Hereford	Hereford Muni	1/9096	3/9/11	NDB RWY 20, Amdt 2

[FR Doc. 2011–7613 Filed 4–1–11; 8:45 am]

BILLING CODE 4910–13–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Docket No. SSA–2009–0048]

RIN 0960–AH05

Extension of Sunset Date for Attorney Advisor Program

AGENCY: Social Security Administration.

ACTION: Final rule.

SUMMARY: We are extending for 2 years our rule authorizing attorney advisors to conduct certain prehearing procedures and to issue fully favorable decisions. The current rule will expire on August 10, 2011. In this final rule, we are extending the sunset date to August 9, 2013. We are making no other substantive changes.

DATES: This final rule is effective May 4, 2011.

FOR FURTHER INFORMATION CONTACT: Susan Swansiger, Social Security Administration, 5107 Leesburg Pike, Falls Church, VA 22041–3260, 703–605–8500 for information about this final rule. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Version

The electronic file of this document is available on the date of publication in the **Federal Register** at *http://www.gpoaccess.gov/fr/index.html.*

Background of the Attorney Advisor Program

On August 9, 2007, we issued an interim final rule permitting some attorney advisors to conduct certain prehearing procedures. 72 FR 44763. We instituted this practice to enable us to provide more timely service to the increasing number of applicants for Social Security disability benefits and Supplemental Security Income payments based on disability. We considered the public comments we received on the interim final rule and, on March 3, 2008, issued the rule without change as a final rule. 73 FR 11349. Under this rule, attorney advisors may develop claims and, in appropriate cases, issue fully favorable decisions.

We included in §§ 404.942(g) and 416.1442(g) of the interim final rule a provision that the program would end on August 10, 2009, unless we decided either to terminate the rule earlier or to extend it beyond that date by publication of a final rule in the **Federal Register**. On July 13, 2009, we published a final rule that extended the sunset date of the program until August 10, 2011. 74 FR 33327.

Explanation of Extension

When we published the final rules reinstating the attorney advisor program in 2008, we discussed a variety of concerns about the program and stated that we intended to closely monitor it and make changes if it did not meet our expectations. 73 FR 11349, 11350, 11351, and 11352. We have been monitoring the program, and it has met our expectations.

The number of requests for hearings has continued to increase significantly in recent years, and we expect that these increases will continue. The attorney advisor program has proven to be an invaluable tool in our efforts to issue favorable decisions timely, decide cases efficiently, and reduce the number of claims pending at the hearing level, while maintaining accuracy in the decision-making process. Accordingly, we have decided to extend the attorney advisor rule for another 2 years, until August 9, 2013. As before, we are reserving the authority to end the program earlier or to extend it by publishing a final rule in the **Federal Register**. We also are adding additional technical references to §§ 404.942(f)(1) and 416.1442(f)(1) to make clear certain authorities attorney advisors have when they adjudicate claims under the attorney advisor program.

Regulatory Procedures

Justification for Issuing Final Rule Without Notice and Comment

We follow the Administrative Procedure Act (APA) rulemaking procedures specified in 5 U.S.C. 553 when developing regulations. Section 702(a)(5) of the Social Security Act, 42 U.S.C. 902(a)(5). The APA provides exceptions to its notice and public comment procedures when an agency finds there is good cause for dispensing with such procedures because they are impracticable, unnecessary, or contrary to the public interest. We have determined that good cause exists for dispensing with the notice and public comment procedures for this rule. 5 U.S.C. 553(b)(B). Good cause exists because this final rule only extends the sunset date of an existing rule and adds cross-references. It makes no substantive changes to the rule. The current regulations expressly provide that we may extend or terminate this rule. Therefore, we have determined that opportunity for prior comment is unnecessary, and we are issuing this rule as a final rule.

Executive Order 12866 as Supplemented by Executive Order 13563

We consulted with the Office of Management and Budget (OMB) and determined that this final rule does meet the criteria for a significant regulatory action under Executive Order 12866 as supplemented by Executive Order 13563. Thus, OMB reviewed the final rule.

Regulatory Flexibility Act

We certify that this final rule will not have a significant economic impact on a substantial number of small entities as it affects individuals only. Therefore, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act, as amended.

Paperwork Reduction Act

This rule does not create any new or affect any existing collections and, therefore, does not require OMB approval under the Paperwork Reduction Act.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance; 96.006, Supplemental Security Income.)

List of Subjects

20 CFR Part 404

Administrative practice and procedure; Blind, Disability benefits; Old-age, Survivors and Disability Insurance; Reporting and recordkeeping requirements; Social Security.

20 CFR Part 416

Administrative practice and procedure; Reporting and recordkeeping requirements; Supplemental Security Income (SSI).

Dated: March 29, 2011.

Michael J. Astrue,

Commissioner of Social Security.

For the reasons stated in the preamble, we are revising subpart J of part 404 and subpart N of part 416 of title 20 of the Code of Federal Regulations as set forth below:

PART 404—FEDERAL OLD–AGE, SURVIVORS AND DISABILITY INSURANCE (1950—)

Subpart J—[Amended]

■ 1. The authority citation for subpart J of part 404 continues to read as follows:

Authority: Secs. 201(j), 204(f), 205(a)–(b), (d)–(h), and (j), 221, 223(i), 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 401(j), 404(f), 405(a)–(b), (d)–(h), and (j), 421, 423(i), 425, and 902(a)(5)); sec. 5, Pub. L. 97–455, 96 Stat. 2500 (42 U.S.C. 405 note); secs. 5, 6(c)–(e), and 15, Pub. L. 98–460, 98 Stat. 1802 (42 U.S.C. 421 note); sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

■ 2. In § 404.942, revise paragraphs (f)(1) and (g) to read as follows:

§ 404.942 Prehearing proceedings and decisions by attorney advisors.

* * * * *

(f) * * *

(1) Authorize an attorney advisor to exercise the functions performed by an administrative law judge under §§ 404.1520a, 404.1526, 404.1527, and 404.1546.

* * * * *

(g) *Sunset provision.* The provisions of this section will no longer be effective on August 9, 2013, unless we terminate them earlier or extend them beyond that date by notice of a final rule in the **Federal Register**.

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart N—[Amended]

■ 3. The authority citation for subpart N continues to read as follows:

Authority: Secs. 702(a)(5), 1631, and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1383, and 1383b); sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

■ 4. In § 416.1442, revise paragraphs (f)(1) and (g) to read as follows:

§ 416.1442 Prehearing proceedings and decisions by attorney advisors.

* * * * *

(f) * * *

(1) Authorize an attorney advisor to exercise the functions performed by an administrative law judge under §§ 416.920a, 416.924(g), 416.926, 416.926a(n), 416.927, and 416.946.

* * * * *

(g) *Sunset provision.* The provisions of this section will no longer be effective on August 9, 2013, unless we terminate them earlier or extend them beyond that date by notice of a final rule in the **Federal Register**.

[FR Doc. 2011–7898 Filed 4–1–11; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 9520]

RIN 1545–BG13

Withdrawal of Regulations Related to Validity and Priority of Federal Tax Lien

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations related to the validity and priority of the Federal tax lien against certain persons under section 6323 of the Internal Revenue Code (the Code). The final regulations update the corresponding Treasury Regulations to reflect changes in the law and in IRS practice.

DATES: *Effective Date:* These regulations are effective on April 4, 2011.

Applicability Date: These regulations apply to any notice of Federal tax lien filed on or after April 4, 2011.

FOR FURTHER INFORMATION CONTACT: Debra A. Kohn at (202) 622–3600 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains final regulations that amend the Procedure and Administration Regulations (26 CFR part 301) under section 6323 of the Code. If any person liable for tax neglects or refuses to pay after demand, the amount of that tax is a lien in favor of the United States against all property and rights to property of such person under section 6321. Section 6323 provides that a Federal tax lien is only valid against certain persons if a notice of Federal tax lien (NFTL) is filed and addresses generally the validity and priority of the Federal tax lien against such persons. Section 6323(b) and (c) addresses the protection of certain interests even though an NFTL has been filed. Section 6323(f) prescribes the place for filing and the form of an NFTL. Section 6323(g) addresses the refiling of an NFTL. Section 6323(h) contains definitions of certain terms used throughout section 6323.

Since 1976, there have been numerous amendments to section 6323 that are not reflected in the existing regulations. There have also been several changes to IRS practice that thus far have not been reflected in the regulations. On April 17, 2008, a notice of proposed rulemaking (REG–141998–06) to reflect these changes in law and practice was published in the **Federal Register** (73 FR 20877–01). No comments were received and no public hearing was requested or held. Accordingly, in this Treasury Decision, the proposed regulations are adopted substantially without change with the exception of one revision described in this preamble.

Explanation of Revision

Section 301.6323(g)–1(a) sets forth general principles pertaining to refiling NFTLs. Most NFTLs now contain a certificate of release that automatically becomes effective on the date prescribed in the NFTL, which is the date the required refiling period ends. Therefore, if an NFTL that contains a certificate of

release is not timely refiled in each jurisdiction where it was originally filed, the lien self-releases and is extinguished in all jurisdictions. See IRC § 6325(f)(1)(A). The extinguishment of the lien invalidates NFTLs filed in other jurisdictions and requires the IRS to file certificates of revocation, as well as new NFTLs, in each jurisdiction where NFTLs were previously filed.

The proposed regulations contemplated amending § 301.6323(g)–1(a)(3) to provide generally that, with respect to an NFTL that includes a certificate of release, failure to timely refile the NFTL in any jurisdiction where it was originally filed extinguishes the lien and renders the NFTL ineffective with respect to property that is the subject matter of a suit to which the United States is a party that is commenced before the required filing period expires, and property that has been levied upon by the United States before the refiling period expires. Further consideration led to the determination that failure to timely refile the NFTL should not render the NFTL ineffective under these circumstances. Accordingly, the final regulations provide that neither failure to timely refile the NFTL, nor the release of the lien, shall alter or impair any right of the United States to property or its proceeds that is the subject of a levy or judicial proceeding commenced prior to the end of the refiling period or the release of the lien, except to the extent that a person acquires an interest in the property for adequate consideration after the commencement of the proceeding and does not have notice of, and is not bound by, the outcome of the proceeding.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Debra A. Kohn of the Office of the Associate Chief Counsel (Procedure and Administration).

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

■ **Paragraph 1.** The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 301.6323(b)–1 is amended as follows:

■ 1. Paragraph (d)(1) is revised.

■ 2. Paragraph (d)(3) *Examples 1* and *3* are revised.

■ 3. Paragraphs (g)(1) and (g)(2) *Examples 1*, *2*, and *3* are revised.

■ 4. Paragraphs (i)(1)(iii) and (j) are revised.

The revisions read as follows:

§ 301.6323(b)–1 Protection for certain interests even though notice filed.

* * * * *

(d) *Personal property purchased in casual sale*—(1) *In general.* Even though a notice of lien imposed by section 6321 is filed in accordance with § 301.6323(f)–1, the lien is not valid against a purchaser (as defined in § 301.6323(h)–1(f)) of household goods, personal effects, or other tangible personal property of a type described in § 301.6334–1 (which includes wearing apparel, school books, fuel, provisions, furniture, arms for personal use, livestock, and poultry (whether or not the seller is the head of a family); and books and tools of a trade, business, or profession (whether or not the trade, business, or profession of the seller)), purchased, other than for resale, in a casual sale for less than $1,380, effective for 2010 and adjusted each year based on the rate of inflation (excluding interest and expenses described in § 301.6323(e)–1).

* * * * *

(3) * * *

Example 1. A, an attorney's widow, sells a set of law books for $200 to B, for B's own use. Prior to the sale a notice of lien was filed with respect to A's delinquent tax liability in accordance with § 301.6323(f)–1. B has no actual notice or knowledge of the tax lien. In addition, B does not know that the sale is one of a series of sales. Because the sale is a casual sale for less than $1,380 and involves books of a profession (tangible personal property of a type described in § 301.6334–1, irrespective of the fact that A has never engaged in the legal profession), the tax lien is not valid against B even though a notice of lien was filed prior to the time of B's purchase.

* * * * *

Example 3. In an advertisement appearing in a local newspaper, G indicates that he is offering for sale a lawn mower, a used television set, a desk, a refrigerator, and certain used dining room furniture. In response to the advertisement, H purchases the dining room furniture for $200. H does not receive any information which would impart notice of a lien, or that the sale is one of a series of sales, beyond the information contained in the advertisement. Prior to the sale a notice of lien was filed with respect to G's delinquent tax liability in accordance with § 301.6323(f)–1. Because H had no actual notice or knowledge that substantially all of G's household goods were being sold or that the sale is one of a series of sales, and because the sale is a casual sale for less than $1,380, H does not purchase the dining room furniture subject to the lien. The household goods are of a type described in § 301.6334–1(a)(2) irrespective of whether G is the head of a family or whether all such household goods offered for sale exceed $8,250 in value.

* * * * *

(g) *Residential property subject to a mechanic's lien for certain repairs and improvements*—(1) *In general.* Even though a notice of a lien imposed by section 6321 is filed in accordance with § 301.6323(f)–1, the lien is not valid against a mechanic's lien or (as defined in § 301.6323(h)–1(b)) who holds a lien for the repair or improvement of a personal residence if—

(i) The residence is occupied by the owner and contains no more than four dwelling units; and

(ii) The contract price on the prime contract with the owner for the repair or improvement (excluding interest and expenses described in § 301.6323(e)–1) is not more than $6,890, effective for 2010 and adjusted each year based on the rate of inflation.

(iii) For purposes of paragraph (g)(1)(ii) of this section, the amounts of subcontracts under the prime contract with the owner are not to be taken into consideration for purposes of computing the $6,890 prime contract price. It is immaterial that the notice of tax lien was filed before the contractor undertakes his work or that he knew of the lien before undertaking his work.

(2) * * *

Example 1. A owns a building containing four apartments, one of which he occupies as his personal residence. A notice of lien which affects the building is filed in accordance with § 301.6323(f)–1. Thereafter,

A enters into a contract with B in the amount of $800, which includes labor and materials, to repair the roof of the building. B purchases roofing shingles from C for $300. B completes the work and A fails to pay B the agreed amount. In turn, B fails to pay C for the shingles. Under local law, B and C acquire mechanic's liens on A's building. Because the contract price on the prime contract with A is not more than $6,890 and under local law B and C acquire mechanic's liens on A's building, the liens of B and C have priority over the Federal tax lien.

Example 2. Assume the same facts as in *Example 1,* except that the amount of the prime contract between A and B is $7,100. Because the amount of the prime contract with the owner, A, is in excess of $6,890, the tax lien has priority over the entire amount of each of the mechanic's liens of B and C, even though the amount of the contract between B and C is $300.

Example 3. Assume the same facts as in *Example 1,* except that A and B do not agree in advance upon the amount due under the prime contract but agree that B will perform the work for the cost of materials and labor plus 10 percent of such cost. When the work is completed, it is determined that the total amount due is $850. Because the prime contract price is not more than $6,890 and under local law B and C acquire mechanic's liens on A's residence, the liens of B and C have priority over the Federal tax lien.

* * * * *

(i) * * *

(1) * * *

(iii) After the satisfaction of a levy pursuant to section 6332(b), unless and until the Internal Revenue Service delivers to the insuring organization a notice (for example, another notice of levy, a letter, etc.) executed after the date of such satisfaction, that the lien exists.

* * * * *

(j) *Effective/applicability date.* This section applies to any notice of Federal tax lien filed on or after April 4, 2011.

■ **Par. 3.** Section 301.6323(c)–2 is amended as follows:

■ 1. Paragraph (d) *Example 1*, *2*, *3*, *4*, and *5* is revised.

■ 2. Paragraph (e) is added.

The revisions and addition read as follows:

§ 301.6323(c)–2 Protection for real property construction or improvement financing agreements.

* * * * *

(d) * * *

Example 1. A, in order to finance the construction of a dwelling on a lot owned by him, mortgages the property to B. The mortgage, executed January 4, 2006, includes an agreement that B will make cash disbursements to A as the construction progresses. On February 1, 2006, in accordance with § 301.6323(f)–1, a notice of lien is filed and recorded in the public index with respect to A's delinquent tax liability. A continues the construction, and B makes cash disbursements on June 15, 2006, and December 15, 2006. Under local law B's security interest arising by virtue of the disbursements is protected against a judgment lien arising February 1, 2006 (the date of tax lien filing) out of an unsecured obligation. Because B is the holder of a security interest coming into existence by reason of cash disbursements made pursuant to a written agreement, entered into before tax lien filing, to make cash disbursements to finance the construction of real property, and because B's security interest is protected, under local law, against a judgment lien arising as of the time of tax lien filing out of an unsecured obligation, B's security interest has priority over the tax lien.

Example 2. (i) C is awarded a contract for the demolition of several buildings. On March 3, 2004, C enters into a written agreement with D which provides that D will make cash disbursements to finance the demolition and also provides that repayment of the disbursements is secured by any sums due C under the contract. On April 1, 2004, in accordance with § 301.6323(f)–1, a notice of lien is filed with respect to C's delinquent tax liability. With actual notice of the tax lien, D makes cash disbursements to C on August 13, September 13, and October 13, 2004. Under local law D's security interest in the proceeds of the contract with respect to the disbursements is entitled to priority over a judgment lien arising on April 1, 2004 (the date of tax lien filing) out of an unsecured obligation.

(ii) Because D's security interest arose by reason of disbursements made pursuant to a written agreement, entered into before tax lien filing, to make cash disbursements to finance a contract to demolish real property, and because D's security interest is valid under local law against a judgment lien arising as of the time of tax lien filed out of an unsecured obligation, the tax lien is not valid with respect to D's security interest in the proceeds of the demolition contract.

Example 3. Assume the same facts as in *Example 2* and, in addition, assume that, as further security for the cash disbursements, the March 3, 2004, agreement also provides for a security interest in all of C's demolition equipment. Because the protection of the security interest arising from the disbursements made after tax lien filing under the agreement is limited under section 6323(c)(3) to the proceeds of the demolition contract and because, under the circumstances, the security interest in the equipment is not otherwise protected under section 6323, the tax lien will have priority over D's security interest in the equipment.

Example 4. (i) On January 3, 2006, F and G enter into a written agreement, whereby F agrees to provide G with cash disbursements, seed, fertilizer, and insecticides as needed by G, in order to finance the raising and harvesting of a crop on a farm owned by G. Under the terms of the agreement F is to have a security interest in the crop, the farm, and all other property then owned or thereafter acquired by G. In accordance with § 301.6323(f)–1, on January 10, 2006, a notice of lien is filed and recorded in the public index with respect to G's delinquent tax liability. On March 3, 2006, with actual notice of the tax lien, F makes a cash disbursement of $5,000 to G and furnishes him seed, fertilizer, and insecticides having a value of $10,000. Under local law F's security interest, coming into existence by reason of the cash disbursement and the furnishing of goods, has priority over a judgment lien arising January 10, 2006 (the date of tax lien filing and recording in the public index) out of an unsecured obligation.

(ii) Because F's security interest arose by reason of a disbursement (including the furnishing of goods) made under a written agreement which was entered into before tax lien filing and which constitutes an agreement to finance the raising or harvesting of a farm crop, and because F's security interest is valid under local law against a judgment lien arising as of the time of tax lien filing out of an unsecured obligation, the tax lien is not valid with respect to F's security interest in the crop even though a notice of lien was filed before the security interest arose. Furthermore, because the farm is property subject to the tax lien at the time of tax lien filing, F's security interest with respect to the farm also has priority over the tax lien.

Example 5. Assume the same facts as in *Example 4* and in addition that on October 2, 2006, G acquires several tractors to which F's security interest attaches under the terms of the agreement. Because the tractors are not property subject to the tax lien at the time of tax lien filing, the tax lien has priority over F's security interest in the tractors.

(e) *Effective/applicability date.* This section applies with respect to any notice of Federal tax lien filed on or after April 4, 2011.

■ **Par. 4.** Section 301.6323(f)–1 is amended as follows:

■ 1. Paragraph (d)(2) is revised.

■ 2. Paragraph (f) is added.

The revision and addition read as follows:

§ 301.6323(f)–1 Place for filing notice; form.

* * * * *

(d)* * *

(2) *Form 668 defined.* The term *Form 668* means either a paper form or a form transmitted electronically, including a form transmitted by facsimile (fax) or electronic mail (e-mail). A Form 668 must identify the taxpayer, the tax liability giving rise to the lien, and the date the assessment arose regardless of the method used to file the notice of Federal tax lien.

* * * * *

(f) *Effective/applicability date.* This section applies with respect to any notice of Federal tax lien filed on or after April 4, 2011.

■ **Par. 5.** Section 301.6323(g)–1 is amended as follows:

■ 1. Paragraphs (a)(1), (a)(3) introductory text, (a)(3)(i), and (a)(3)(ii),

(a)(4), (b)(3) introductory text, (b)(3) *Example 1,* and (b)(3) *Example 5* are revised.

■ 2. The undesignated text following paragraph (a)(3)(ii) is removed.

■ 3. Paragraph (c)(1) is revised.

■ 4. Paragraph (c)(2) is removed.

■ 5. Paragraph (c)(3) is redesignated as paragraph (c)(2) and revised.

■ 6. Paragraph (d) is added.

The revisions and additions read as follows:

§ 301.6323(g)–1 Refiling of notice of tax lien.

(a) *In general*—(1) *Requirement to refile.* In order to continue the effect of a notice of lien, the notice must be refiled in the place described in paragraph (b) of this section during the required refiling period (described in paragraph (c) of this section). If two or more notices of lien are filed with respect to a particular tax assessment, and each notice of lien contains a certificate of release that releases the lien when the required refiling period ends, the failure to comply with the provisions of paragraphs (b)(1)(i) and (c) of this section in respect to one of the notices of lien releases the lien and renders ineffective the refiling of any other notice of lien.

* * * * *

(3) *Effect of failure to refile*—If the Internal Revenue Service fails to refile a notice of lien in the manner described in paragraphs (b) and (c) of this section, the notice is not effective, after the expiration of the required refiling period, as against any person described in section 6323(a), without regard to when the interest of the person in the property subject to the lien was acquired. If a notice of lien contains a certificate of release that provides that the lien is released at the end of the required refiling period unless the notice of lien is refiled, and the notice of lien is not refiled, then the lien is extinguished and the notice of lien is ineffective.

(i) However, neither the failure to refile before the expiration of the refiling period, nor the release of the lien, shall alter or impair any right of the United States to property or its proceeds that is the subject of a levy or judicial proceeding commenced prior to the end of the refiling period or the release of the lien, except to the extent that a person acquires an interest in the property for adequate consideration after the commencement of the proceeding and does not have notice of, and is not bound by, the outcome of the proceeding.

(ii) If a suit or levy referred to in the preceding sentence is dismissed or released and the property is subject to the lien at such time, a notice of lien with respect to the property is not effective after the suit or levy is dismissed or released unless refiled during the required refiling period.

(4) *Filing of new notice.* If a notice of lien is not refiled, and the notice of lien contains a certificate of release that automatically releases the lien when the required refiling period ends, the lien is released as of that date and is no longer in existence. The Internal Revenue Service must revoke the release before it can file a new notice of lien. This new filing must meet the requirements of section 6323(f) and § 301.6323(f)–1 and is effective from the date on which such filing is made.

(b) * * *

(3) *Examples.* The following examples illustrate the provisions of this section:

Example 1. A, a delinquent taxpayer, is a resident of State M and owns real property in State N. In accordance with § 301.6323(f)–1, notices of lien are filed in States M and N. The notices of lien contain certificates of release that release the lien at the end of the required refiling period. In order to continue the effect of the notice of lien filed in either M or N, the Internal Revenue Service must refile, during the required refiling period, the notice of lien with the appropriate office in M as well as with the appropriate office in N.

* * * * *

Example 5. D, a delinquent taxpayer, is a resident of State M and owns real property in States N and O. In accordance with § 301.6323(f)–1, the Internal Revenue Service files notices of lien in M, N, and O States. Nine years and 6 months after the date of the assessment shown on the notice of lien, D establishes his residence in P, and at that time the Internal Revenue Service receives from D a notification of his change in residence in accordance with the provisions of paragraph (b)(2) of this section. On a date which is 9 years and 7 months after the date of the assessment shown on the notice of lien, the Internal Revenue Service properly refiles notices of lien in M, N, and O which refilings are sufficient to continue the effect of each of the notices of lien. The Internal Revenue Service is not required to file a notice of lien in P because D did not notify the Internal Revenue Service of his change of residence to P more than 89 days prior to the date each of the refilings in M, N, and O was completed.

* * * * *

(c) *Required refiling period*—(1) *In general.* For the purpose of this section, except as provided in paragraph (c)(2) of this section, the term *required refiling period* means—

(i) The 1-year period ending 30 days after the expiration of 10 years after the date of the assessment of the tax; and

(ii) The 1-year period ending with the expiration of 10 years after the close of the preceding required refiling period for such notice of lien.

(2) *Examples.* The following examples illustrate the provisions of this paragraph:

Example 1. On March 10, 1998, an assessment of tax is made against B, a delinquent taxpayer, and a lien for the amount of the assessment arises on that date. On July 10, 1998, in accordance with § 301.6323(f)–1, a notice of lien is filed. The notice of lien filed on July 10, 1998, is effective through April 9, 2008. The first required refiling period for the notice of lien begins on April 10, 2007, and ends on April 9, 2008. A refiling of the notice of lien during that period will extend the effectiveness of the notice of lien filed on July 10, 1998, through April 9, 2018. The second required refiling period for the notice of lien begins on April 10, 2017, and ends on April 9, 2018.

Example 2. Assume the same facts as in *Example 1,* except that the Internal Revenue Service fails to refile a notice of lien during the first required refiling period (April 10, 2007, through April 9, 2008). A notice of lien is filed on June 9, 2009, in accordance with § 301.6323(f)–1. This notice is ineffective if the original notice contained a certificate of release, as the certificate of release would have had the effect of extinguishing the lien as of April 10, 2008. The Internal Revenue Service could revoke the release and file a new notice of lien, which would be effective as of the date it was filed.

(d) *Effective/applicability date.* This section applies with respect to any notice of Federal tax lien filed on or after April 4, 2011.

■ **Par. 6.** Section 301.6323(h)–1 is amended as follows:

■ 1. Paragraphs (a)(2)(ii) and (a)(3) are revised.

■ 2. A new paragraph (h) is added.

The revisions and addition read as follows:

§ 301.6323(h)–1 Definitions.

(a) * * *

(2) * * *

(ii) The following example illustrates the application of paragraph (a)(2):

Example. (i) Under the law of State X, a security interest in certificated securities, negotiable documents, or instruments may be perfected, and hence protected against a judgment lien, by filing or by the secured party taking possession of the collateral. However, a security interest in such intangible personal property is considered to be temporarily perfected for a period of 20 days from the time the security interest attaches, to the extent that it arises for new value given under an authenticated security agreement. Under the law of X, a security interest attaches to such collateral when there is an agreement between the creditor and debtor that the interest attaches, the debtor has rights in the property, and consideration is given by the creditor. Under the law of X, in the case of temporary perfection, the security interest in such

property is protected during the 20-day period against a judgment lien arising, after the security interest attaches, out of an unsecured obligation. Upon expiration of the 20-day period, the holder of the security interest must perfect its security interest under local law.

(ii) Because the security interest is perfected during the 20-day period against a subsequent judgment lien arising out of an unsecured obligation, and because filing or the taking of possession before the conclusion of the period of temporary perfection is not considered, for purposes of paragraph (a)(2)(i) of this section, to be a requisite action which relates back to the beginning of such period, the requirements of this paragraph are satisfied. Because filing or taking possession is a condition precedent to continued perfection, filing or taking possession of the collateral is a requisite action to establish such priority after expiration of the period of temporary perfection. If there is a lapse of perfection for failure to file or take possession, the determination of when the security interest exists (for purposes of protection against the tax lien) is made without regard to the period of temporary perfection.

(3) *Money or money's worth.* For purposes of this paragraph, the term *money or money's worth* includes money, a security (as defined in paragraph (d) of this section), tangible or intangible property, services, and other consideration reducible to a money value. Money or money's worth also includes any consideration which otherwise would constitute money or money's worth under the preceding sentence which was parted with before the security interest would otherwise exist if, under local law, past consideration is sufficient to support an agreement giving rise to a security interest, and provided that the grant of the security interest is not a fraudulent transfer under local law or 28 U.S.C. § 3304(a)(2). A firm commitment to part with money, a security, tangible or intangible property, services, or other consideration reducible to a money value does not, in itself, constitute a consideration in money or money's worth. A relinquishing or promised relinquishment of dower, curtesy, or of a statutory estate created in lieu of dower or curtesy, or of other marital rights is not a consideration in money or money's worth. Nor is love and affection, promise of marriage, or any other consideration not reducible to a money value a consideration in money or money's worth.

* * * * *

(h) *Effective/applicability date.* This section applies as of April 4, 2011.

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

Approved: March 25, 2011.

Michael Mundaca,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2011–7933 Filed 4–1–11; 8:45 am]

BILLING CODE 4830–01–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4042

Single-Employer Plan Termination Initiated by PBGC

CFR Correction

In Title 29 of the Code of Federal Regulations, Part 1927 to End, revised as of July 1, 2010, on page 973, § 4042.5 is added to read as follows:

§ 4042.5 Disclosure of administrative record by PBGC.

(a) *Request for Administrative Record*—(1) *In general.* Beginning on the third business day (as defined in § 4000.22 of this chapter) after PBGC has issued a notice under section 4042 of ERISA that a plan should be terminated, an affected party with respect to the plan may make a request to PBGC for the administrative record of PBGC's determination that the plan should be terminated.

(2) *Requirements.* A request under paragraph (a) of this section must:

(i) Be in writing;

(ii) State the name of the plan and that the request is for the administrative record with respect to a notice issued by PBGC under section 4042 of ERISA that a plan should be terminated;

(iii) State the name of the person making the request, the person's relationship to the plan (e.g., plan participant), and that such relationship meets the definition of affected party under § 4001.2 of this chapter; and

(iv) Be signed by the person making the request.

(3) A request under paragraph (a) of this section must be sent to PBGC's Disclosure Officer at the address provided on PBGC's Web site. To expedite processing, the request should be prominently identified as an "Administrative Record Request."

(b) *PBGC Response to Request for Administrative Record*—(1) *Notification of plan administrator and plan sponsor.* Upon receipt of a request under paragraph (a) of this section, PBGC will promptly notify the plan administrator and plan sponsor that it has received a request for the administrative record, and the date by which PBGC will provide the information to the affected party that made the request.

(2) *Confidential information.* (i) In responding to a request under paragraph (a) of this section, PBGC will not disclose any portions of the administrative record that are prohibited from disclosure under the Privacy Act, 5 U.S.C. 552a.

(ii) A plan administrator or plan sponsor that has received notification pursuant to paragraph (b)(1) of this section may seek a court order under which those portions of the administrative record that contain confidential information described in section 552(b) of title 5, United States Code—

(A) Will be disclosed only to authorized representatives (within the meaning of section 4041(c)(2)(D)(iv) of ERISA) that agree to ensure the confidentiality of such information, and

(B) Will not be disclosed to other affected parties.

(iii) If, before the 15th business day (as defined in § 4000.22 of this chapter) after PBGC has received a request under paragraph (a), PBGC receives a court order as described in paragraph (b)(2)(ii) of this section, PBGC will disclose those portions of the administrative record that contain confidential information described in section 552(b) of title 5, United States Code, only as provided in the order.

(3) *Timing of response.* PBGC will send the administrative record to the affected party that made the request not later than the 15th business day (as defined in § 4000.22 of this chapter) after it receives the request.

(4) *Form and manner.* PBGC will provide the administrative record using measures (including electronic measures) reasonably calculated to ensure actual receipt of the material by the intended recipient.

[FR Doc. 2011–8007 Filed 4–1–11; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–1152]

RIN 1625–AA00

Safety Zones; Charleston Race Week, Charleston Harbor, Charleston, SC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing three temporary safety zones for the Charleston Race Week in Charleston, South Carolina. The races will take place on April 14, 2011 through April 17, 2011. The temporary safety zones are necessary for the safety of race participants, participant vessels, and the general public during the races.

DATES: This rule is effective from April 14, 2011 through April 17, 2011, and will be enforced daily from 9 a.m. until 5 p.m. on April 14, 2011 through April 17, 2011.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2010–1152 and are available online by going to *http://www.regulations.gov,* inserting USCG–2010–1152 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary final rule, call or e-mail Lieutenant Julie Blanchfield, Sector Charleston Waterways Management Division, Coast Guard; telephone 843–740–3184, e-mail *Julie.E.Blanchfield@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the Coast Guard did not receive notice of the Charleston Race Week with sufficient time to publish an NPRM and to receive public comments prior to the event. Any delay in the effective date of this rule would be contrary to the public interest because immediate action is needed to minimize the potential danger to race participants, participant vessels, and the general public.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register** for the reasons enumerated above. In addition, there is an immediate need to protect waterway users from hazards associated with these races.

Background and Purpose

Charleston Ocean Racing Association, in partnership with the South Carolina Maritime Foundation, will be hosting three sailboat races commencing on April 14, 2011 and concluding on April 17, 2011 in the Charleston Harbor, Charleston, South Carolina. The temporary safety zones are necessary to protect race participants, participant vessels, and the general public from the hazards associated with the sailboat races.

Discussion of Rule

The three temporary safety zones encompass certain navigable waters of the Charleston Harbor, Charleston, South Carolina. The safety zones will be enforced daily from 9 a.m. until 5 p.m. on April 14, 2011 through April 17, 2011. Persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within any of the safety zones unless specifically authorized by the Captain of the Port Charleston or a designated representative. Persons and vessels desiring to enter, transit through, anchor in, or remain within any of the safety zones may contact the Captain of the Port Charleston via telephone at 843–740–7050, or a designated representative via VHF radio on channel 16, to seek authorization. The Coast Guard will provide notice of the safety zones via broadcast notice to mariners and marine safety information bulletins. On-scene notice will also be provided by the Coast Guard or local law enforcement.

Regulatory Analyses

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

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

The economic impact of this rule is not significant for the following reasons: (1) The rule will be in effect for only four days; (2) the safety zones will be enforced for only eight hours each day; (3) although persons and vessels will not be able to enter, transit through, anchor in, or remain within any of the safety zones without authorization from the Captain of the Port Charleston or a designated representative, they will be able to operate in the surrounding area during the enforcement periods; (4) persons and vessels may still enter, transit through, anchor in, or remain within the safety zones if authorized by the Captain of the Port Charleston or a designated representative; and (5) advance notification of the safety zones will be made to the local maritime community via broadcast notice to mariners and marine safety information bulletins.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities, some of which may be small entities: The owners or operators of vessels intending to enter, transit through, anchor in, or remain within the waters of the Charleston Harbor encompassed within any of the three safety zones from 9 a.m. on April 14, 2011 through 5 p.m. on April 17, 2011.

For the reasons discussed in the Regulatory Planning and Review section above, this rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves establishing three temporary safety zones that will be enforced for eight hours each day for four days. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add a temporary § 165.T07–1152 to read as follows:

§ 165.T07–1152 Safety Zones; Charleston Race Week, Charleston Harbor, Charleston, SC.

(a) *Regulated areas.* The following regulated areas are safety zones. All coordinates are North American Datum 1983.

(1) *Safety Zone #1.* All waters encompassed within an 800 yard radius of position 32°46′00″ N, 79°54′56″ W.

(2) *Safety Zone #2.* All waters encompassed within a 900 yard radius of position 32°45′49″ N, 79°54′08″ W.

(3) *Safety Zone #3.* All waters encompassed within a 900 yard radius of position 32°45′46″ N, 79°53′13″ W.

(b) *Definition.* The term "designated representative" means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port Charleston in the enforcement of the regulated areas.

(c) *Regulations.*

(1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated areas unless authorized by the Captain of the Port Charleston or a designated representative.

(2) Persons and vessels desiring to enter, transit through, anchor in, or remain within any of the regulated areas may contact the Captain of the Port Charleston via telephone at 843–740–7050, or a designated representative via VHF radio on channel 16, to seek authorization. If authorization to enter, transit through, anchor in, or remain within any of the regulated areas is granted by the Captain of the Port Charleston or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Charleston or a designated representative.

(3) The Coast Guard will provide notice of the regulated area via broadcast notice to mariners, marine safety information bulletins, and by on-scene designated representatives.

(d) *Effective Date and Enforcement Periods.* This rule is effective from April 14, 2011 through April 17, 2011. The regulated areas will be enforced daily from 9 a.m. until 5 p.m. on April 14, 2011 through April 17, 2011.

Dated: March 18, 2011.

Michael F. White Jr.,

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

[FR Doc. 2011–7872 Filed 4–1–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0140]

RIN 1625–AA00

Safety Zone; Texas International Boat Show Power Boat Races; Corpus Christi Marina, Corpus Christi, TX

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the Corpus Christi, Texas for North American Tri-Hull Championship scheduled to take place during the Texas International Boat Show. The North American Tri-Hull Championship will consist of a series of power boat races for approximately 8–12 vessels that are 18-feet long. The temporary safety zone is necessary for the safety of race participants, spectators and the general public.

DATES: The rule is effective from 7 a.m. April 8, 2011 until 8 p.m. April 10, 2011.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2011–0140 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–0140 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail LT Wes Geyer, Sector Corpus Christi Waterways Management Division, Coast Guard; telephone 361–888–3162, e-mail *Wes.M.Geyer@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the dates of the event were changed to an earlier date to eliminate the conflict with a sailing regatta that would have presented a safety issue for participants in both events.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Due to the need for immediate action the restriction of vessel traffic and spectator craft is necessary to protect life, property and the environment; therefore, a 30-day notice is impracticable. Delaying the effective date would be contrary to the safety zone's intended objectives of protecting participants and spectators from the known dangers associated with power boat races.

Basis and Purpose

This safety zone is necessary to ensure the safety of the public and boating traffic in the Corpus Christi Marina area during this event. This safety zone is intended to restrict vessel traffic from a portion of the Corpus Christi Marina for short durations of time. The size of the zone was determined by natural barriers on all four sides of the race course and local knowledge about wind, waves, and currents in this particular area.

Discussion of Rule

This safety zone will encompass all waters of the Corpus Christi Marina contained between the People's Street T-Head on the west, the breakwater on the east, the southern boundary running from the southernmost tip of the People's Street T-Head (approx 27N 47′43.4″, −97W 23′16″) along a line running due east to the breakwater (approx 27N 47′43.8″, −97W 23′5.2″), and the northern boundary line running from the northern most tip of the secondary breakwater (approx 27N 47′57″, −97W 23′21.7″) and the end of the primary breakwater (approx 27N 47′59.1″, −97 23′9.5″).

Potential users of the waters contained in the temporary safety zone will be notified by VHF–FM radio from the Patrol Commander and also from a designated representative of the Captain of the Port over the race committee's loud hailer speaker system when the

safety zone will be implemented for the 15 minutes before each race or race heat. The same methods of notification will be used to make notifications of the subsequent re-opening of the waters contained in the safety zone approximately 15 minutes following the conclusion of each race or race heat when the power boats have departed the race course.

Regulatory Analyses

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

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Homeland Security.

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

This determination is based upon the size and location of the safety zone within the waterway. Vessels will only be restricted from the safety zone for a short period of time for each race heat. Vessels may transit through the safety zone with permission from the Captain of the Port Corpus Christi or his designated on-scene patrol commander between each race heat.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in the Corpus Christi Marina within the safety zone.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This rule will only be in effect for 45–60 minutes at a time. Vessel traffic may enter or transit through the safety zone with the permission of the Captain of the Port Corpus Christi or his designated on-scene representative. Before the effective period, we will issue maritime advisories and ensure they are widely available to users of the Corpus Christi marina.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use

voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves establishing a temporary safety zone in the Marina of Corpus Christi, Texas.

An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary § 165.T08–0140 to read as follows:

§ 165.T08–0140 Safety Zone; Texas International Boat Show Power Boat Races, Corpus Christi Marina, Corpus Christi, TX.

(a) *Regulated area.* The following regulated area is a safety zone. All waters of the Corpus Christi Marina contained between the People's Street T-Head on the west, the primary breakwater on the east, the southern boundary running from the southernmost tip of the People's Street T-Head (approx 27N 47′43.4″, −97W 23′16″) along a line running due east to the breakwater (approx 27N 47′43.8″, −97W 23′5.2″), and the northern boundary line running from the northern most tip of the secondary breakwater (approx 27N 47′57″, −97W 23′21.7″) and the end of the primary breakwater (approx 27N 47′59.1″, −97 23′9.5″).

(b) *Definition.* The term "designated representative" means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, State, and local officers designated by or assisting the Captain of the Port Corpus Christi in the enforcement of the regulated area.

(c) *Regulations.* (1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area unless authorized by the Captain of the Port Corpus Christi or a designated representative.

(2) Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated area may contact the Captain of the Port Corpus Christi via telephone at 361–939–6393, or a designated representative via VHF radio on channel 16, to seek permission. If permission to enter, transit through, anchor in, or remain within the regulated area is granted by the Captain of the Port Corpus Christi or a designated representative, all persons and vessels receiving such permission must comply with the instructions of the Captain of the Port Corpus Christi or a designated representative.

(3) The Coast Guard will provide notice of the regulated area via local notice to mariners, marine safety information bulletins, broadcast notice to mariners, and by on-scene designated representatives.

(d) *Enforcement period.* The rule is effective from April 8, 2011 until April 10, 2011. The rule will be enforced daily between 7 a.m. and 8 p.m. for the period of 15 minutes before each race or race heat starts to a period of 15 minutes following the conclusion of each race or race heat. Potential users of the waters contained in the safety zone will be notified by VHF–FM radio from the Patrol Commander and also from a designated representative of the Captain of the Port over the race committee's loud hailer speaker system when the safety zone will be implemented for the 15 minutes before each race or race heat. The same methods of notification will be used to make notifications of the subsequent re-opening of the waters contained in the safety zone approximately 15 minutes following the conclusion of each race or race heat when the power boats have departed the race course.

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

Dated: March 2, 2011.

K. Moore,

Captain, U.S. Coast Guard, Alternate Captain of the Port Corpus Christi.

[FR Doc. 2011–7876 Filed 4–1–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–0997]

RIN 1625–AA00

Safety Zones: Fireworks Displays in the Captain of the Port Columbia River Zone

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending the enforcement period for the safety zone established for the Oregon Symphony Concert Fireworks Display in Portland, Oregon. The amendment is necessary because in recent years the actual date of the event has differed from that listed in the enforcement period of the regulation.

DATES: This rule is effective May 4, 2011.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2010–0997 and are available online by going to *http://www.regulations.gov,* inserting USCG–2010–0997 in the "Keyword" box, and then clicking "Search." This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE.,

Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail MST1 Jaime Sayers, Waterways Management Division, Marine Safety Unit Portland, U.S. Coast Guard; telephone 503–240–9319, e-mail *Jaime.A.Sayers@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On November 23, 2010, we published a notice of proposed rulemaking (NPRM) entitled Safety Zones: Fireworks Displays in the Captain of the Port Columbia River Zone in the **Federal Register** (75 FR 71408). We received no comments on the proposed rule. A public meeting was not requested and none was held.

Background and Purpose

The Oregon Symphony Concert Fireworks Display in Portland, Oregon is an annual fireworks event requiring a safety zone to ensure the safety of the maritime public due to the inherent dangers associated with such events. Although the safety zone is codified in 33 CFR 165.1315(a)(7), in recent years the enforcement period in that regulation has not covered the actual date of the event. As such, the Coast Guard has had to publish a new safety zone for the event. This amendment will change the enforcement period in 33 CFR 165.1315(a)(7) to more accurately cover the time period of when the event occurs each year.

Discussion of Comments and Changes

No comments on the proposed rulemaking were received and no changes made to the rule.

Regulatory Analyses

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

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. The Coast Guard has made this determination based on the fact that this rule only changes the period during which the safety zone established in 33 CFR 165.1315(a)(7) may be effective and enforced.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities some of which may be small entities: The owners or operators of vessels wishing to transit the safety zone established by this rule. This rule will not have a significant economic impact on a substantial number of small entities, however, because it only changes the period during which the safety zone established in 33 CFR 165.1315(a)(7) may be made effective and enforced.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That

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

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves amending the enforcement period of an existing safety zone. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1

■ 2. Amend § 165.1315 by revising Paragraph (a)(7)(ii) to read as follows:

§ 165.1315 Safety Zones: Fireworks Displays in the Captain of the Port Columbia River Zone.

(a) * * *

(7) * * *

(ii) *Enforcement Period.* One day between the third week of August and the third week of September.

* * * * *

Dated: March 19, 2011.

D.E. Kaup,

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

[FR Doc. 2011–7877 Filed 4–1–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0139]

RIN 1625–AA00

Safety Zone; Naval Air Station Corpus Christi Air Show, Oso Bay, Corpus Christi, TX

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the navigable waters of Oso Bay in Corpus Christi, Texas in support of the 2011 Naval Air Station Corpus Christi Air Show. This temporary safety zone is necessary to provide for the safety of other vessels and users of the waterway. Persons and vessels would be prohibited from entering into, transiting through, or anchoring within this temporary safety zone unless authorized by the Captain of the Port or his designated representative.

DATES: This rule is effective from 8 a.m. Friday, April 8, 2011 until 7 p.m. Sunday, April 10, 2011.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2011–0139 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–0139 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail LT Wes Geyer, Sector Corpus Christi Waterways Management Division, Coast Guard; telephone 361–888–3162, e-mail *Wes.M.Geyer@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because immediate action is necessary to ensure the safety of participants and spectators in the Naval Air Station Corpus Christi Air Show.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Due to the need for immediate action and the fact the no commercial entities and very few recreational fisherman utilize this section of Oso Bay, the restriction of vessel traffic and spectator craft is necessary to protect life, property and the environment; therefore, a 30-day notice is impracticable. Delaying the effective date would be contrary to the safety zone's intended objectives of protecting participants and spectators in the Naval Air Station Corpus Christi Air Show.

Basis and Purpose

The Coast Guard is establishing this temporary safety zone to help ensure the

safety of the maritime public during the Naval Air Station Corpus Christi Air Show taking place on Naval Air Station Corpus Christi in Corpus Christi, Texas. The safety zone is necessary because of the numerous potential hazards associated with air show events.

Discussion of Rule

The temporary safety zone created by this rule encompasses all waters within the points, Ocean Drive Bridge over Oso Bay, (27N 42′36.2″, −97W 18′31.4″) running south to the point (27N 41′50.4″, −97W 18′52.4″), running southeast to the Turtle Cove Park (27N 41′3.3″, −97W 17′55.6″) and running north along the shoreline of the Naval Air Station back to the Ocean Drive bridge across Oso Bay.

The zone resembles a triangle running from the Ocean Drive Bridge over Oso Bay south to the point in the middle of the Bay, then east towards Turtle Cove Park and then running along the shoreline of the Naval Air Station back to the bridge across Oso Bay.

Regulatory Analyses

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

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit the affected waterway during the time of enforcement. The safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: It is minimal in size, shallow in water-depth, short in duration, there are no known commercial fishermen that utilize this affected area and infrequent recreational fishermen utilize this area.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are

technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g.), of the Instruction. This rule involves establishing a temporary safety zone on Oso Bay in Corpus Christi, Texas.

An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary § 165.T08–0140 to read as follows:

§ 165.T08–0139 Safety Zone; Naval Air Station Corpus Christi Air Show, Oso Bay, Corpus Christi, TX.

(a) *Regulated Area.* The following regulated area is a safety zone. All waters within the points, Ocean Drive Bridge over Oso Bay, (27N 42′36.2″, −97 W 18′31.4″) running south to the point (27N 41′50.4″ −97 W 18′52.4″), running southeast to the Turtle Cove Park (27N 41′3.3″, −97 W 17′55.6″) and running north along the shoreline of the Naval Air Station back to the Ocean Drive bridge across Oso Bay. The zone resembles a triangle running from the Ocean Drive Bridge over Oso Bay south to the point in the middle of the Bay, then east towards Turtle Cove Park and then running along the shoreline of the Naval Air Station back to the bridge across Oso Bay.

(b) *Enforcement Period.* The rule will be enforced from approximately 8 a.m. until approximately 7 p.m., daily, from Friday, April 8, 2011 until Sunday, April 10, 2011, unless canceled sooner by the Captain of the Port.

(c) *Definitions.* The term "designated representative" means any commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local, State, and Federal law enforcement vessels who have been authorized to act on the behalf of the Captain of the Port.

(d) *Regulations.* (1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area unless authorized by the Captain of the Port Corpus Christi or a designated representative.

(2) Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated area may contact the Captain of the Port Corpus Christi via telephone at 361–939–6393, or a designated representative via VHF radio on channel 16, to seek permission. If permission to enter, transit through, anchor in, or remain within the regulated area is granted by the Captain of the Port Corpus Christi or a designated representative, all persons and vessels receiving such permission must comply with the instructions of the Captain of the Port Corpus Christi or a designated representative. (3) The Coast Guard will provide notice of the regulated area via local notice to mariners, marine safety information bulletins, broadcast notice to mariners, and by on-scene designated representatives.

(e) The Coast Guard may be assisted by other Federal, State, or local agencies.

Dated: March 2, 2011.

K. Moore,

Captain, U.S. Coast Guard, Alternate Captain of the Port Corpus Christi.

[FR Doc. 2011–7874 Filed 4–1–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–0939]

RIN 1625–AA00

Safety Zones; M/V Davy Crockett, Columbia and Willamette Rivers

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The U.S. Coast Guard is extending the stationary and moving emergency safety zones established on the waters of the Columbia and Willamette Rivers surrounding the M/V DAVY CROCKETT. The Coast Guard is also reducing the size of the stationary emergency safety zone surrounding the M/V DAVY CROCKETT at approximately river mile 117 on the Columbia River. The safety zones are necessary to help ensure the safety of the response workers and maritime public from the hazards associated with deleterious state of and ongoing response operations involving the M/V DAVY CROCKETT. All persons and vessels are prohibited from entering or remaining in the safety zones unless authorized by the Captain of the Port, Columbia River or his designated representative.

DATES: This rule is effective from April 4, 2011 through April 17, 2011. This rule is effective with actual notice for purposes of enforcement on March 11, 2011. This rule will remain in effect through April 17, 2011.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2010–0939 and are available online by going to *http://www.regulations.gov,* inserting USCG–2010–0939 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail MST1 Jaime Sayers, Waterways Management Division, Marine Safety Unit Portland, Coast Guard; telephone 503–240–9319, e-mail *Jaime.A.Sayers@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager,

Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because to do so would be contrary to public interest since the safety zones are immediately necessary to help ensure the safety of the response workers and maritime public due to deleterious state of and ongoing response operations involving the M/V DAVY CROCKETT.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register** because to do so would be contrary to public interest since the safety zones are immediately necessary to help ensure the safety of the response workers and maritime public due to deleterious state of and ongoing response operations involving the M/V DAVY CROCKETT.

Background and Purpose

The M/V DAVY CROCKETT, a 431 ft barge, is anchored on the Washington State side of the Columbia River at approximately river mile 117. The vessel is in a severe state of disrepair. The Coast Guard, other state and federal agencies, and Federal contractors are working to remove the vessel. The response operations require a minimal wake in the vicinity of the vessel to minimize the spread of contaminants and help ensure the safety of response workers on or near the vessel and in the water. In addition, due the deleterious state of the vessel only authorized persons and/or vessels can be safely allowed on or near it.

All or portions of the M/V DAVY CROCKETT may be removed and transported to another location for cleaning and scrapping. Due to the inherent dangers associated with moving large pieces of such a vessel, only authorized persons and vessels can be safely allowed on or near it.

Discussion of Rule

The stationary safety zone created by this rule will cover all waters of the Columbia River encompassed within the following four points: Point one at 45°34′59.16″ N/122°28′27.19″ W, point two at 45°34′54.95″ N/122°28′27.84″ W, point three at 45°34′54.91″ N/122°28′14.48″ W, and point four at 45°34′57.43″ N/122°26′14.63″ W. Geographically this area encompasses all waters of the Columbia River within a rectangle starting at approximately 200 ft up river of the M/V DAVY CROCKETT extending to 200 ft toward the river channel from the M/V DAVEY CROCKETT and then ending 200 ft down river the M/V DAVY CROCKETT.

The moving safety zone created by this rule will encompass all waters of the Columbia and Willamette Rivers within 200 feet in all directions around any portion of the M/V DAVY CROCKETT.

Regulatory Analyses

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

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

The Coast Guard has made this determination based on the fact that the safety zones created by this rule will not significantly affect the maritime public because the areas covered are limited in size and/or have little commercial or recreational activity. In addition, vessels may enter the safety zones with the permission of the Captain of the Port, Columbia River or his designated representative.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities some of which may be small entities: the owners and operators of vessels intending to operate in the areas covered by the safety zones created in this rule. The safety zones will not have a significant economic impact on a substantial number of small entities, however, because the areas covered are limited in size and/or have little commercial or recreational activity. In addition, vessels may enter the safety zones with the permission of the Captain of the Port, Columbia River or his designated representative.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of

their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves the creation of safety zones. An environmental analysis checklist and a categorical exclusion determination will be available in the docket where

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Revise § 165.T13–175 to read as follows:

§ 165.T13–175 Safety Zones; M/V Davy Crockett, Columbia and Willamette Rivers.

(a) *Location:* The following areas are safety zones:

(1) All waters of the Columbia River encompassed within the following four points: point one at 45°34′59.16″ N/122°28′27.19″ W, point two at 45°34′54.95″ N/122°28′27.84″ W, point three at 45°34′54.91″ N/122°28′14.48″ W, and point four at 45°34′57.43″ N/122°26′14.63″ W. Geographically this area encompasses all waters of the Columbia River within a rectangle starting at approximately 200 ft up river of the M/V DAVY CROCKETT extending to 200 ft toward the river channel from the M/V DAVEY CROCKETT and then ending 200 ft down river the M/V DAVY CROCKETT.

The moving safety zone created by this rule will encompass all waters of the Columbia and Willamette Rivers within 200 feet in all directions around any portion of the M/V DAVY CROCKETT.

(b) *Regulations.* In accordance with the general regulations in 33 CFR Part 165, Subpart C, no person may enter or remain in the safety zones created in this section or bring, cause to be brought, or allow to remain in the safety zones created in this section any vehicle, vessel, or object unless authorized by the Captain of the Port, Columbia River or his designated representative.

(c) *Enforcement Period.* The safety zones created in this section will be in effect from March 11, 2011 through April 17, 2011 unless cancelled sooner by the Captain of the Port, Columbia River.

Dated: March 14, 2011.

L.R. Tumbarello,

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

[FR Doc. 2011–7890 Filed 4–1–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No.: PTO–P–2010–0092]

RIN 0651–AC52

Changes To Implement the Prioritized Examination Track (Track I) of the Enhanced Examination Timing Control Procedures

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: The United States Patent and Trademark Office (Office) is revising the rules of practice in patent cases to implement a procedure under which applicants may request prioritized examination at the time of filing of an application upon payment of appropriate fees and compliance with certain requirements. In June of 2010, the Office requested comments on a proposal to provide applicants with greater control over when their utility and plant applications are examined and to promote greater efficiency in the patent examination process (3-Track). The Office, in addition to requesting written comments, conducted a public meeting to collect input from the public. The vast majority of public comments and input that the Office received were supportive of the prioritized examination track (Track I) portion of the 3-Track proposal. While the Office is in the process of considering and revising the other portions of the 3-Track proposal in view of the public comments and input, the Office wishes to implement the prioritized examination track (Track I) now to provide the procedure for prioritized examination to applicants as quickly as possible. In February of 2011, the Office published a notice of proposed rule making to set forth the proposed procedure for prioritized examination and to seek public comments on the proposed procedure. The Office considered the public comments and revised the proposed procedure in view of the public comments. The Office, in this final rule, is revising the rules of practice to implement the optional procedure for prioritized examination. The aggregate goal for processing applications under prioritized examination is to provide a final disposition within twelve months of prioritized status being granted. The Office is initially limiting requests for prioritized examination to a maximum of 10,000 applications during the remainder of fiscal year 2011.

DATES: *Effective Date:* The changes set forth in this rule are effective May 4, 2011. *Applicability date:* A request for prioritized examination may be submitted with any original utility or plant application filed on or after May 4, 2011.

FOR FURTHER INFORMATION CONTACT: Eugenia A. Jones, Kathleen Kahler Fonda, or Michael T. Cygan, Office of Patent Legal Administration, Office of the Associate Commissioner for Patent Examination Policy, by telephone at (571) 272–7727, (571) 272–7754 or (571) 272–7700, or by mail addressed to: Mail Stop Comments Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450, marked to the attention of Eugenia A. Jones.

SUPPLEMENTARY INFORMATION: In June 2010, the Office requested comments from the public on a proposal to provide applicants with greater control over when their original utility or plant applications are examined and promote work sharing between intellectual property offices (3-Track). *See Enhanced Examination Timing Control Initiative; Notice of Public Meeting,* 75 FR 31763 (June 4, 2010), 1355 *Off. Gaz. Pat. Office* 323 (June 29, 2010). Specifically, the Office proposed to implement procedures under which an applicant would be able to: (1) Request prioritized examination of an original utility or plant nonprovisional application (Track I); (2) request a delay in docketing the application for examination by filing a request for delay in payment of the search fee, the examination fee, the claims fees and the surcharge (if appropriate) for a maximum period not to exceed thirty months in an original utility or plant application filed under 35 U.S.C. 111(a) (Track III); or (3) obtain processing under the current examination procedure (Track II) by not requesting either Track I or Track III processing. The Office, in addition to requesting written comments, conducted a public meeting to collect input from the public. The vast majority of public comments and input that the Office received was supportive of the prioritized examination track (Track I) portion of the 3-Track proposal. While the Office is in the process of considering and revising the Track III proposal (a request for a delay in docketing the application for examination) in view of the public comments and input, the Office wishes to implement the prioritized examination track (Track I) now to provide the optional procedure for prioritized examination to applicants as quickly as possible.

In February of 2011, the Office published a notice of proposed rule making to set forth the proposed procedure for prioritized examination and to seek public comments on the proposed procedure. *See Changes to Implement the Prioritized Examination Track (Track I) of the Enhanced Examination Timing Control Procedures,* 76 *FR* 6369 (Feb. 4, 2011), 1364 *Off. Gaz. Pat. Office* 50 (March 1, 2011). The Office proposed, among other changes, a fee for filing a request for prioritized examination under 37 CFR 1.102(e) in the amount of $4,000, in addition to filing fees for the application. Since the majority of the public comments supported the optional prioritized examination procedure, the Office is adopting the proposed procedure for prioritized examination (Track I).

The Office, in this final rule, is revising the rules of practice to implement the optional procedure for prioritized examination. The aggregate goal for processing applications under prioritized examination is to provide a final disposition within twelve months of prioritized status being granted. The Office is limiting requests for prioritized examination under 37 CFR 1.102(e) to a maximum of 10,000 applications during fiscal year 2011. The Office will revisit this limit at the end of fiscal year 2011 to evaluate what the appropriate maximum should be, if any, for future years.

The fee for filing a request for prioritized examination under 37 CFR 1.102(e) is set at $4,000.00. The fees due on filing for an application for which prioritized examination is being sought are the filing fees (including any applicable excess claims and application size fees), the prioritized examination fee, processing fee, and publication fee. Therefore, the fee amount due on filing for a utility application for which prioritized examination is being sought (not including any applicable excess claims and application size fees) is $5,520 ($4,892 for a small entity): (1) The $1,090 ($462 small entity) in filing fees which include the $330 ($82 small entity filing by EFS-Web) basic filing fee, the $540 ($270 small entity) search fee, and the $220 ($110 small entity) examination fee; (2) the $4,000 prioritized examination fee; (3) the $130 processing fee; and (4) the $300 publication fee.

Under the Office's current statutory authority, the Office is not permitted to reduce the prioritized examination fee for small entity applicants. The Office indicated in the notice of proposed rule making that if legislation is passed providing a fifty percent fee reduction for providing prioritized examination for small entities under 35 U.S.C. 41(h)(1) and providing that the prioritized examination fees be set to recover the estimated cost of the prioritized examination program, the Office would set the prioritized examination fee at $4800 ($2400 for small entities), since 27.8 percent of the new serialized utility and plant applications filed in fiscal year 2010 were by small entities (based upon data from the Office's Patent Application Locating and Monitoring (PALM) system). *See Changes to Implement the Prioritized Examination Track (Track I)*

of the Enhanced Examination Timing Control Procedures, 76 FR at 6370, 1364 *Off. Gaz. Pat. Office* at 51. Section 9(i) of the America Invents Act provides that "[t]he Director shall reduce fees for providing prioritized examination of utility and plant patent applications by 50 percent for small entities that qualify for reduced fees under section 41(h)(1) of title 35, United States Code, so long as the fees of the prioritized examination program are set to recover the estimated cost of the program," and § 9(j) of the America Invents Act provides that this change is effective on the date of enactment of S. 23. *See* S. 23, 112th Cong. (2011). S. 23 was passed by the United States Senate on March 8, 2011. Neither S. 23 nor any other legislation, however, has been enacted that provides fifty percent fee reduction for providing prioritized examination under 37 CFR 1.102(e) for small entities. If S. 23 is enacted into law, the fee for providing prioritized examination under 37 CFR 1.102(e) will be $4,800 ($2,400 for small entities) and these fee amounts will be applicable to any request for providing prioritized examination filed on or after the date of enactment of S. 23. Thus, if S. 23 or similar legislation that provides a fifty percent fee reduction for prioritized examination for small entities is enacted into law, the fee amount due on filing for a utility application for which prioritized examination is being sought (not including any applicable excess claims and application size fees) is $6,320 ($3,292 for a small entity): (1) The $1,090 ($462 small entity) in filing fees which include the $330 ($82 small entity filing by EFS-Web) filing fee, the $540 ($270 small entity) search fee, and the $220 ($110 small entity) examination fee; (2) the $4,800 ($2,400 small entity) prioritized examination fee; (3) the $130 processing fee; and (4) the $300 publication fee.

Under prioritized examination, an application will be accorded special status and placed on the examiner's special docket throughout its entire course of prosecution before the examiner until a final disposition is reached in the application. The aggregate goal for handling applications under prioritized examination is to provide a final disposition within twelve months of prioritized status being granted. The final disposition for the twelve-month goal means: (1) Mailing of a notice of allowance, (2) mailing of a final Office action, (3) filing of a notice of appeal, (4) declaration of an interference by the Board of Patent Appeals and Interferences (BPAI), (5) filing of a request for continued examination, or (6) abandonment of the application, within twelve months from the date prioritized status has been granted. An application under prioritized examination, however, would not be accorded special status throughout its entire course of appeal or interference before the BPAI, or after the filing of a request for continued examination.

Unlike the accelerated examination program, the time periods set in Office actions for applications in Track I would be the same as set forth in section 710.02(b) of the *Manual of Patent Examining Procedure* (MPEP) (8th ed. 2001) (Rev. 8, July 2010). In the event, however, an applicant files a petition for an extension of time to file a reply, the prioritized examination of the application will be terminated. In addition, filing a request for a suspension of action or an amendment to the application which results in more than four independent claims, more than thirty total claims, or a multiple dependent claim, prioritized examination will terminate.

To maximize the benefit of prioritized examination, applicants should consider one or more of the following: (1) Acquiring a good knowledge of the state of the prior art to be able to file the application with a clear specification having a complete set of claims from the broadest to which the applicant believes he is entitled in view of the state of the prior art to the narrowest to which the applicant is willing to accept; (2) submitting an application in condition for examination; (3) filing replies that are completely responsive to the prior Office action and within the shortened statutory period for reply set in the Office action; and (4) being prepared to conduct interviews with the examiner. A description of what it means for an application to be in condition for examination is provided at MPEP § 708.02(a) (subsection VIII.C).

The requirements for requesting prioritized examination are summarized below. A patent application may be granted prioritized examination status under the following conditions:

(1) The application must be a new original utility or plant nonprovisional application filed under 35 U.S.C. 111(a) on or after May 4, 2011, the effective date of this final rule. The procedure for prioritized examination does not apply to international applications, design applications, reissue applications, provisional applications, and reexamination proceedings. Applicants may request prioritized examination for a continuing application (*e.g.,* a continuation or divisional application) by filing a request and the required fees including the $4,000 prioritized examination fee. However, a continuing application will not automatically be given prioritized examination status based on the request filed in the parent application. Each continuing application must on its own meet all requirements for prioritized examination under 37 CFR 1.102(e).

(2) The application must be complete under 37 CFR 1.51(b) including any excess claims fees paid on filing, and the application must be filed via the Office's electronic filing system (EFS-Web) if it is a utility application. Thus, the application must be filed with an oath or declaration under 37 CFR 1.63, the basic filing fee, the search fee, the examination fee, any excess claims fees, and any application size fee.

(3) The application must contain no more than four independent claims and no more than thirty total claims. The application must not contain any multiple dependent claims.

(4) The request for prioritized examination must be filed with the application in compliance with 37 CFR 1.102(e) accompanied by the prioritized examination fee set forth in 37 CFR 1.17(c), the processing fee set forth in 37 CFR 1.17(i), and the publication fee set forth in 37 CFR 1.18(d). Applicants are advised to use the certification and request form PTO/SB/424 which is available on EFS-Web.

(5) The request for prioritized examination may be accepted if the requirements under 37 CFR 1.102(e) are satisfied and the limit for the number of requests for the year has not been reached. The Office is limiting requests for prioritized examination under 37 CFR 1.102(e) to a maximum of 10,000 applications during fiscal year 2011. The Office will revisit this limit at the end of fiscal year 2011 to evaluate what the appropriate maximum should be, if any.

Discussion of Specific Rules

Title 37 of the Code of Federal Regulations, Part 1, is proposed to be amended as follows:

Section 1.17: The Office is implementing a procedure for prioritized examination (Track I) upon applicant's request and payment of a fee at the time of filing of the application, without meeting the requirements of the accelerated examination program (*e.g.,* examination support document). *See* § 1.102(e). Section 1.17(c) is amended to set the fee for filing a request for prioritized examination under § 1.102(e) at $4,000.00. Section 1.17(i) is amended to add a reference for requesting prioritized examination of an application under § 1.102(e).

Section 1.102: Section 1.102 is revised to provide for the Track I procedure in which applicant has the option to request prioritized examination on the date the application is filed. Particularly, § 1.102(a) is revised by adding a reference to paragraph (e) so that applications may be advanced out of turn for examination or for further action upon filing a request under § 1.102(e). Section 1.102(e) is added to set forth the requirements for filing a request for prioritized examination, which provides that a request for prioritized examination will not be granted unless: (1) The application is an original utility or plant nonprovisional application filed under 35 U.S.C. 111(a) that is complete as defined by § 1.51(b), with any fees due under § 1.16 (the filing fee, search fee, examination fee, any applicable excess claims fee, and any applicable application size fee) paid on filing; (2) the application is filed via the Office's electronic filing system (EFS–Web) if it is a utility application; (3) the request for prioritized examination, including the prioritized examination fee set forth in § 1.17(c), the processing fee set forth in § 1.17(i), and the publication fee set forth in § 1.18(d) are present upon filing; and (4) the application contains or is amended to contain no more than four independent claims, no more than thirty total claims, and no multiple dependent claims. Because plant applications may not be filed via EFS-Web, the Office will accept a request for prioritized examination in paper when it accompanies the filing of a plant application.

As discussed previously, a request for prioritized examination may be accepted if the requirements under § 1.102(e) are satisfied and the limit for the number of requests has not been reached. The Office is limiting requests for prioritized examination under § 1.102(e) to a maximum of 10,000 applications during the remainder of fiscal year 2011. The Office will revisit this limit at the end of fiscal year 2011 to evaluate what the appropriate maximum should be, if any.

Response to Comments: In February of 2011, the Office published a notice of proposed rule making to set forth the proposed procedure for prioritized examination and to invite the public to submit written comments on the proposed procedure by March 7, 2011. *See Changes to Implement the Prioritized Examination Track (Track I) of the Enhanced Examination Timing Control Procedures,* 76 FR 6369 (Feb. 4, 2011), 1364 *Off. Gaz. Pat. Office* 50 (March 1, 2011) (notice of proposed rule making). The Office received twelve written comments from intellectual property organizations, industry, academic and research institutions, individual patent practitioners and the general public. The Office has considered all of the public comments that were received by March 7, 2011. The comments germane to the changes set forth in this notice for prioritized examination and the Office's responses to those comments are provided below.

Comment 1: A few comments indicated that the Track I proposal has merit, but should be implemented and maintained only if the Office is permitted to retain all the fee income generated by applicants seeking Track 1 status. One comment believed it is premature for the Office to be implementing a rule making that depends on increased spending authority, given the uncertain status of the Office's budget. The comment was concerned that all fees collected by the Office are still not made available to the agency in the current fiscal year and Congress has not authorized a budget that would permit the Office to retain any fees collected under the prioritized examination program. One comment was concerned about the ability of the Office to offer prioritized examination under the Track I program without delaying examination of non-prioritized applications, particularly since the Office will not have any additional resources to conduct prioritized examination of Track I applications at least until it is able to hire and train additional examiners, which it may not be able to do under current budget and hiring restrictions.

Response: Track I prioritized examination is being implemented as a result of a discussion between the Office and its stakeholders, which has included requests for written comments and a public meeting. The vast majority of public input is supportive of prioritized examination, which is designed to provide important benefits to the Office and its stakeholders, including greater control to applicants as to when their utility and plant applications are examined, and greater efficiency in the patent examination process. In view of this widespread support, the Office wishes to implement the procedure so as to provide the procedure to applicants as quickly as possible. The President's Fiscal Year 2012 Budget Request for the Office includes the revenue that is expected to be generated by the prioritized examination program. The Office appreciates that implementation of the Track I program could have an effect on the examination of non-prioritized applications during fiscal year 2011 due to the current budget situation and its impact on the Office's ability to hire new examiners, but any effect should not extend into future fiscal years.

Comment 2: One comment stated that the separate processing fee of $130 under § 1.17(i) should be eliminated if already covered by the $4,000 fee set by proposed § 1.17(c). If the processing fee is not covered, then for the sake of clarity there should be one fee of $4,130 set by proposed § 1.17(c), and the § 1.17(i) fee should be eliminated.

Response: The processing fee is for processing the request for prioritized examination, which is separate and apart from the prioritized examination cost. The Office is tracking the fees separately and thus treating them as two different fees.

Comment 3: One comment stated that the publication fee under § 1.18(d) should not be required from an applicant as an up-front fee because the application might never publish or issue as a patent.

Response: The publication fee under § 1.18(d) is being required as a condition of the Track I program. If an applicant can make the certification required by 35 U.S.C. 122(b)(2)(B)(i) and § 1.213(a), the applicant may request nonpublication under 35 U.S.C. 122(b)(2)(B)(i) in an application in which a request for prioritized examination is also being filed. However, the publication fee is still required to be paid on filing of the application. Applicant may file a nonpublication request upon filing of the application and the nonpublication request may be rescinded at any time. Submission of the publication fee set forth in § 1.18(d) at the time of filing will save time and reduce costs for the Office. If the application is not published as a patent application publication and the application issues as a patent, the applicant may request a refund of the publication fee in accordance with MPEP § 1126.

Comment 4: One comment requested clarification regarding whether the publication fee under § 1.18(d) and the processing fee under § 1.17(i) were required to be paid on filing to participate in the Track I program, or whether the fees are only required if they are applicable. The comment requested clarification regarding the nature of the processing fee and questioned whether the processing fee was required only if early publication was requested.

Response: Both the publication fee under § 1.18(d) and the processing fee under § 1.17(i) are required to be paid at the time of filing by any applicant requesting prioritized examination

under § 1.102(e). The processing fee is for processing the request for prioritized examination. It is not a fee for requesting early publication.

Comment 5: A few comments indicated that the fee for prioritized examination is too high. One comment stated that the fee should not exceed patent application fees and thus should be less than one thousand dollars. If the fee does significantly exceed patent application fees, then a greater benefit should be given such as a three-month time period from the request until the final examination result. One comment stated that the Office has not explained whether it would cost $4,000 more to examine a prioritized application than a regular application, or whether the fee is for the purpose of supporting more examiners to examine all applications.

Response: As stated in the notice of proposed rule making, the prioritized examination fee is set based on the estimated average cost to the Office of performing the service, per 35 U.S.C. 41(d)(2). A prioritized examination fee that is less than one thousand dollars would not recover the full cost of the necessary resources to increase the work output of the Office without delaying non-prioritized applications. Based on the Office's experience with other accelerated examination programs, the Office would not be able to provide a final examination result within the suggested three-month time period.

Comment 6: Some comments appreciated the statutory limitation on applying fee discounts for small entities, and the fact that such fees are used to hire new examiners, but hoped that such discounts can be implemented in order to make the use of Track I examination more achievable for academic, small business, and other small entity applicants. One comment urged the Office to continue seeking authority to apply small and micro entity fees to the prioritized examination procedure.

Response: The Office appreciates the benefits of the fee reductions currently available to small entities under 35 U.S.C. 41(h)(1), and will continue to seek additional fee setting authority that will permit extension of fee reduction to the prioritized examination fee. As noted in the notice of proposed rule making, the Office has determined an alternate fee structure, should fee reduction be extended to the Track I fee. Upon extension of fee reduction to Track I prioritized examination, the Office would set the prioritized examination fee at $2,400 for small entities, and $4,800 for other entities, in accordance with cost recovery based upon fiscal year 2010 data indicating that 27.8 percent of new serialized utility and plant applications were by small entities.

Comment 7: A few comments indicated that the Track I proposal has merit, but should be implemented and maintained only so long as the program does not adversely impact other patent applicants. One comment was concerned that prioritized examination would promote even further delays in the examination of requests for continued examination since requests for continued examination are currently placed on the examiner's "Special New" application docket, but not eligible for prioritized examination.

Response: The fee for prioritized examination has been calculated to ensure recovery of the full cost of the resources necessary to handle Track I applications without the need to divert resources from non-prioritized applications. As discussed previously, the Office appreciates that implementation of the Track I program could have an effect on the examination of non-prioritized applications during fiscal year 2011 due to the current budget situation and its impact on the Office's ability to hire new examiners, but any effect should not extend into future fiscal years. The prioritized examination program will not further delay the examination of requests for continued examination. Examiners will still be responsible for acting on requests for continued examination in the same time frame.

Comment 8: The Office received three comments regarding restriction requirements in Track I applications. The first comment suggested that examiners should be instructed to make restriction requirements by phone whenever possible and to invite a discussion of the restriction requirement at the time it is made with a view to reaching a consensus with the applicant. The second comment stated that Track I participants should be permitted to traverse restriction requirements. The third comment stated that petitions from restriction requirements in Track I cases should be handled expeditiously such that if the petition decision results in withdrawal of the restriction requirement, the examiner is still able to reach final disposition of the case within the twelve-month target.

Response: Telephone restriction practice is encouraged whenever possible, in accordance with MPEP § 812.01. An applicant who disagrees with a requirement for restriction may traverse in accordance with § 1.143. An applicant's decision to opt-in to prioritized examination has no bearing on restriction practice. Although traversal of a restriction requirement will not terminate the prioritized examination, the benefit to the applicant of a quick examination will be enhanced if such traversals can be avoided. Petitions from requirements for restriction are governed by § 1.144. To ensure prompt consideration of any such petition, applicant should promptly file the petition as soon as the restriction requirement has been made final.

Comment 9: One comment stated that the Office should provide Track I applicants with a notice as to whether or not Track I status has been granted and the reasons for any denial of Track I status.

Response: The Office will notify a Track I applicant of the grant or dismissal of the request for prioritized examination of the application. If the request is denied, the Office will state the reason.

Comment 10: One comment suggested that the language "an original or continuing utility * * * nonprovisional application" should be used in the proposed § 1.102(e) rather than "an original utility * * * nonprovisional application" in order to indicate that continuing applications (continuations, divisionals, and continuations-in-part) with appropriate filing dates are eligible for Track I. Another comment requested clarification regarding whether continuing applications would qualify for prioritized examination and suggested a revision to proposed § 1.102(e) to exclude continuation or divisional applications since it appeared the intent was to limit the rule to first filed utility and plant applications.

Response: The term "original" as used in the patent statute and rules means any application that is not a reissue application. Original applications include first filings as well as continuing applications. *See* MPEP § 201.04(a). Thus, the suggested revision to add a reference to "continuing" applications would introduce a redundancy into the language of the rule. Likewise, the suggested revision to exclude continuation and divisional applications is not being adopted since the rule is applicable to continuing applications.

Comment 11: One comment stated that a request for prioritized examination should be permitted when an international application enters the national stage under 35 U.S.C. 371.

Response: Because it is necessary to limit requests for prioritized examination at least during the first year, applications entering the national stage under 35 U.S.C. 371 are not

eligible. The Office may reconsider this decision in future years. An applicant who has filed an international application may choose to participate in prioritized examination by filing a by-pass continuation under 35 U.S.C. 111(a) rather than entering the national stage under 35 U.S.C. 371.

Comment 12: One comment stated that a request for prioritized examination status should be permitted when a request for continued examination is filed under § 1.114, regardless of whether a request for prioritized examination was previously granted in the application. One comment stated that, in an application already granted Track I status, upon filing a request for continued examination the applicant should be given the opportunity to continue the Track I status by the payment of an additional fee.

Response: A request for continued examination is not a new application. In accordance with § 1.114, an applicant cannot request continued examination of an application until prosecution is closed. Furthermore, an application in which a request for continued examination has been filed is placed on an examiner's "Special New" docket. *See Notice of Change to Docketing of Requests for Continued Examination, 1348 Off. Gaz. Pat. Office* 254 (November 10, 2009). The application on this docket having the oldest effective filing date must be taken up for action within two bi-weeks. Thus, when a proper request for continued examination is filed, the application has already undergone examination, and will continue to be treated in an expedited manner relative to new non-continuing applications, but not under the provisions for prioritized examination.

Comment 13: One comment indicated that unexamined applications with the greatest pendency should be given preferential access to the Track I program.

Response: The Office has undertaken an initiative to address the issue of unexamined applications that have been pending for a long time. Current examination resources are being reallocated within and across Technology Centers to start examination of the oldest unexamined applications, with no requirement of additional fees by the applicant. Prioritized examination is a separate initiative for newly filed applications in which applicants may pay an additional fee, which is used by the Office to expand its examination resources. Prioritized examination must be requested upon filing. If an application is pending, the applicant may file a continuing application and request prioritized examination for the new application. This approach ensures equitable treatment for all applicants who seek to participate in the Track I program in view of the limit of 10,000 applications during fiscal year 2011.

Comment 14: A few comments stated that a request for prioritized examination should not be limited to when a patent application is filed. Some comments stated that this would result in applicants filing continuation applications to take advantage of Track I, which will increase the workload of the Office and the applicants. A few comments supported permitting applicants to request prioritized examination with respect to all pending, unexamined applications. One comment suggested requiring a reasonably higher fee for requesting prioritized examination after the patent application has been filed. Another comment supported permitting a request for prioritized examination to be filed at any time.

Response: In recognition of the necessity of adding additional resources so that non-prioritized examination will not be delayed and that prioritized examination will occur within one year, the Office is implementing prioritized examination in a prudent and measured manner. The Office will reevaluate the limitations on prioritized examination based on the results of its initial implementation and after it gains experience with the Track I program. While applicants may file continuing applications at their discretion, any Track I continuation application filed may moot or reduce the issues remaining in the originally filed application. This may result in abandonment of the originally filed application; alternatively, its examination will be aided by the substantial examination performed on the Track I continuing application.

Comment 15: One comment stated that a request for prioritized examination should be permitted for reissue applications to apply the data-driven performance monitoring of Track I to reissue applications.

Response: Reissue applications are already treated as special applications. *See* MPEP § 1442. If the Office were to make prioritized examination available to reissue applications, it would not have any impact on when the examiner is expected to take the application up for action. The Office recognizes that there is a need to better track and monitor the various types of special applications, including reissue applications, and is working on improvements to its tracking and monitoring system as part of its Patents End-to-End Information Technology (IT) project.

Comment 16: One comment suggested that applicants should be permitted to pay the appropriate fees or otherwise make the application complete after filing of the application. The comment noted that applicants are familiar with and rely on missing parts practice to complete applications before they are placed in the examination queue and there appears to be no compelling reason to deviate from this practice for prioritized examination.

Response: Applicants requesting prioritized examination are required to file applications that are complete. If applicants requesting prioritized examination were allowed to file applications that were not complete, it would delay examination of the application, which is directly counter to providing a final disposition of the application in the shortest time possible. In addition, as the Office is initially limiting requests for prioritized examination, the Office considers it appropriate to give priority to applicants whose applications are complete on filing over applicants whose applications require the delays caused by the missing parts practice.

Comment 17: One comment questioned whether the Office will set an annual limit on the number of Track I applications a given applicant can file. One comment questioned whether the Office will set an annual limit on the number of Track I applications per Technology Center.

Response: The Office is not setting an annual limit on the number of requests for prioritized examination that a given applicant can file. The Office is also not setting an annual limit on the number of applications that can be granted Track I prioritized examination per Technology Center. The Office will monitor the Track I program closely. If it is determined that an annual limit is needed per applicant and/or per Technology Center, the Office may make such adjustments to the program in the future.

Comment 18: A few comments indicated that statistics should be published on the number of requests received as well as the aggregate time to final disposition at the greatest level of granularity practical (*e.g.,* the Group Art Unit level or the Technology Center level). One comment stated that the Office should closely monitor which technological areas are using Track I and minimize any imbalances in the backlog of different technology areas.

A few comments indicated that, for each statistic reported, the data should indicate the numbers of small entity and non-small entity applicants. Such information could potentially be used to advocate for reduced fees for small entities.

One comment stated that in order to ensure that non-prioritized applications and overall examination quality are not being impacted, detailed metrics must be provided to the public, including metrics on pendency, quality, and hiring measured against the Office's current stated goals. The comment suggested that the Office could include the composition of examiners (by GS-level) examining applications in each track to further protect against any track bias.

Response: The Office is committed to providing meaningful statistical reports on the Track I program with as much specificity as is practical. The Office will closely monitor the program and make any needed adjustments. The Office favors reduced fees for small entities and, wherever possible, will develop statistical reports to identify the numbers of small entity and non-small entity applicants to support any such legislation.

The ability of the Office to meet its goals for prioritized examination will be posted on the Office's Internet Web site on a quarterly basis at the work group level. Applications examined under Track I will be subject to the same quality metrics applied to applications undergoing non-prioritized examination. Data relating to prioritized examination will be made public to the extent practicable; *e.g.,* to the extent that such data is not linked to any specific application and to the extent that the pertinent sample size for a subgroup of data provides a statistically valid basis for reporting such data for that subgroup.

Comment 19: One comment stated that a final action on an application for which prioritized examination has been requested should be made within a couple of months instead of twelve months.

Response: The Office is setting an aggregate goal of twelve months to final disposition based on its perceived ability to meet the goal. Based on the Office's experience with other accelerated examination programs, the Office would not be able to meet an aggregate goal for handling applications under prioritized examination of two or three months to final disposition.

Comment 20: One comment suggested that the filing of an appeal brief, rather than the filing of a notice of appeal, should trigger the termination of prioritized examination because sometimes a notice of appeal is filed to maintain pendency of an application while the examiner considers an after-final response.

Response: The final disposition for the twelve-month goal includes the mailing of a final Office action. In the situation where an applicant files a notice of appeal after a second non-final Office action, the final disposition will include the filing of the notice of appeal. Thus, once a final Office action has been mailed or a notice of appeal has been filed, whichever is earlier, the examination of the application would no longer be prioritized under § 1.102(e). Therefore, there is no need to make the filing of an appeal brief the final disposition for purposes of the twelve-month goal, rather than the filing of a notice of appeal, to accommodate the situation where an applicant files a notice of appeal to maintain pendency of the application while the examiner considers an after-final reply.

Comment 21: One comment requested a relaxation of the limits on the number of claims so that the prioritized examination program would be accessible to more users, although no suggestion was made as to what the claim limit should be.

Response: In recognition of the necessity of adding additional resources so that non-prioritized examination will not be delayed and that the twelve-month aggregate goal for prioritized examination can be achieved, the Office is implementing prioritized examination in a prudent and measured manner. The Office will revisit the limitations on prioritized examination based on the results of its initial implementation.

Comment 22: One comment stated that the limit on claims would result in an applicant being unable to amend the claims to place them in independent form after a final rejection where dependent claims were found allowable. According to the comment, applicants would either have to file an appeal or do without the full protection to which they are entitled. The comment stated that there should not be a limit on how many claims may be placed in independent form during prosecution. Another comment suggested permitting addition of claims once allowable subject matter has been identified, provided that the added claims do not require further search or examination.

Response: Track I is designed to provide prioritized examination of the application; as such, it is directed towards substantive examination of claims for which no final disposition has been reached. Accordingly, prioritized examination accords a special status to the application until a final disposition is reached in the application. As discussed previously, a final disposition for the twelve-month goal means: (1) Mailing of a notice of allowance, (2) mailing of a final Office action, (3) filing of a notice of appeal, (4) declaration of an interference by the Board of Patent Appeals and Interferences (BPAI), (5) filing of a request for continued examination, or (6) abandonment of the application. The submission of an amendment resulting in there being more than four independent claims or more than thirty total claims is not prohibited, but simply terminates the prioritized examination. Thus, upon mailing of a final rejection (at which point prioritized examination is terminated), applicants may amend the claims to place them in independent form where dependent claims were found allowable, or add new claims, subject only to the limitations applicable to any application under final rejection. *See* § 1.116. Similarly, upon mailing of a notice of allowance, applicants may submit amendments to the claims, again subject only to the limitations applicable to any application that has been allowed. *See* § 1.312

Comment 23: One comment noted that the limit on the number of claims is apparently subject to a preliminary amendment and requested a clarification regarding whether such amendments must be made at the time of filing.

Response: An application in which applicant is requesting prioritized examination under § 1.102(e) must have no more than four independent claims and thirty total claims, and must not have any multiple dependent claims, when the application is filed. Otherwise, the request for prioritized examination under § 1.102(e) will not be granted. While it is possible to file a preliminary amendment on filing of an application to reduce the number of claims to no more than four independent claims and thirty total claims, and to eliminate any multiple dependent claims, the Office strongly encourages applicants to file applications without any preliminary amendments. Applicants should file their applications with the desired claims, rather than submitting a preliminary amendment on filing. This will reduce the amount of processing done by the Office, thus reducing Office costs, and will help ensure patent application publications and patents are printed correctly. *See Revised Procedure for Preliminary Amendments Presented on Filing of a Patent Application,* 1300 *Off. Gaz. Pat. Office* 69 (November 8,

2005). If an amendment is filed in an application that has been granted prioritized examination that results in more than four independent claims or thirty total claims, or a multiple dependent claim, then prioritized examination will be terminated.

Comment 24: One comment stated that an applicant's request for an extension of time should not result in termination of prioritized examination, particularly where the extension of time leads to early issuance of a patent. Another comment stated that an applicant paying for better service from the Office should not be given less time to respond to Office actions than anyone else.

Response: The Office is being flexible by not prohibiting an applicant from filing a request for extension of time in an application that has been granted prioritized examination under § 1.102(e). However, filing an extension of time would significantly impact the Office's ability to meet the twelve-month aggregate goal to final disposition for handling applications under Track I. Therefore, prioritized examination will be terminated if an applicant does file a request for an extension of time in a Track I application.

Rule Making Considerations

A. *Regulatory Flexibility Act:* For the reasons set forth herein, the Deputy General Counsel for General Law of the United States Patent and Trademark Office has certified to the Chief Counsel for Advocacy of the Small Business Administration that changes set forth in this notice will not have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 605(b).

This notice sets forth changes to implement an optional prioritized examination process. The primary impact of the change on the public is that applicants will have the option to request prioritized examination by paying appropriate fees, filing a complete application via the Office's electronic filing system (EFS–Web) with any filing and excess claims fees due paid on filing, and limiting their applications to four independent claims and thirty total claims. No applicant is required to employ this optional prioritized examination process to obtain examination of his or her application under the current procedures for examination of an application for a patent, or to obtain a patent provided that the application meets the current conditions for the applicants to be entitled to a patent. In addition, the availability of this prioritized examination process will not have any significant negative impact on any applicant who elects not to request the prioritized examination process. Therefore, the changes set forth in this notice will not have a significant economic impact on a substantial number of small entities.

B. *Executive Order 12866 (Regulatory Planning and Review):* This rule making has been determined to be significant for purposes of Executive Order 12866 (Sept. 30, 1993).

C. *Executive Order 13563 (Improving Regulation and Regulatory Review):* The Office has complied with Executive Order 13563. Specifically, the Office has: (1) Used the best available techniques to quantify costs and benefits, and has considered values such as equity, fairness and distributive impacts; (2) provided the public with a meaningful opportunity to participate in the regulatory process, including soliciting the views of those likely affected prior to issuing a notice of proposed rule making, and provided online access to the rule making docket; (3) attempted to promote coordination, simplification and harmonization across government agencies and identified goals designed to promote innovation; (4) considered approaches that reduce burdens and maintain flexibility and freedom of choice for the public; and (5) ensured the objectivity of scientific and technological information and processes, to the extent applicable.

D. *Executive Order 13132 (Federalism):* This rule making does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

E. *Executive Order 13175 (Tribal Consultation):* This rule making will not: (1) Have substantial direct effects on one or more Indian tribes; (2) impose substantial direct compliance costs on Indian tribal governments; or (3) preempt tribal law. Therefore, a tribal summary impact statement is not required under Executive Order 13175 (Nov. 6, 2000).

F. *Executive Order 13211 (Energy Effects):* This rule making is not a significant energy action under Executive Order 13211 because this rule making is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required under Executive Order 13211 (May 18, 2001).

G. *Executive Order 12988 (Civil Justice Reform):* This rule making meets applicable standards to minimize litigation, eliminate ambiguity, and reduce burden as set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 (Feb. 5, 1996).

H. *Executive Order 13045 (Protection of Children):* This rule making does not concern an environmental risk to health or safety that may disproportionately affect children under Executive Order 13045 (Apr. 21, 1997).

I. *Executive Order 12630 (Taking of Private Property):* This rule making will not effect a taking of private property or otherwise have taking implications under Executive Order 12630 (Mar. 15, 1988).

J. *Congressional Review Act:* Under the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), prior to issuing any final rule, the United States Patent and Trademark Office will submit a report containing the final rule and other required information to the United States Senate, the United States House of Representatives and the Comptroller General of the Government Accountability Office. The changes in this notice are not expected to result in an annual effect on the economy of 100 million dollars or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Therefore, this notice is not expected to result in a "major rule" as defined in 5 U.S.C. 804(2).

K. *Unfunded Mandates Reform Act of 1995:* The changes set forth in this notice do not involve a Federal intergovernmental mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, of 100 million dollars (as adjusted) or more in any one year, or a Federal private sector mandate that will result in the expenditure by the private sector of 100 million dollars (as adjusted) or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995. *See* 2 U.S.C. 1501 *et seq.*

L. *National Environmental Policy Act:* This rule making will not have any effect on the quality of the environment and is thus categorically excluded from review under the National Environmental Policy Act of 1969. *See* 42 U.S.C. 4321 *et seq.*

M. *National Technology Transfer and Advancement Act:* The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) are not applicable because this rule making

does not contain provisions which involve the use of technical standards.

N. *Paperwork Reduction Act:* This rule making is proposed to implement an optional prioritized examination process. The primary impact of the change on the public is that applicants will have the option to request prioritized examination by paying appropriate fees, filing a complete application via the Office's electronic filing system (EFS–Web) with any filing and excess claims fees due paid on filing, and limiting their applications to four independent claims and thirty total claims.

An applicant who wishes to participate in the program must submit a certification and request to participate in the prioritized examination program, preferably by using Form PTO/SB/424. The Office of Management and Budget (OMB) has determined that, under 5 CFR 1320.3(h), Form PTO/SB/424 does not collect "information" within the meaning of the Paperwork Reduction Act of 1995. Therefore, this rule making does not impose additional collection requirements under the Paperwork Reduction Act which are subject to further review by OMB.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Courts, Freedom of Information, Inventions and patents, Reporting and recordkeeping requirements, Small businesses.

For the reasons set forth in the preamble, 37 CFR part 1 is amended as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES

■ 1. The authority citation for 37 CFR part 1 continues to read as follows:

Authority: 35 U.S.C. 2(b)(2).

■ 2. Section 1.17 is amended by adding paragraph (c) and revising paragraph (i) to read as follows:

§ 1.17 Patent application and reexamination processing fees.

* * * * *

(c) For filing a request for prioritized examination under § 1.102(e) .... $4,000.00.

* * * * *

(i) Processing fee for taking action under one of the following sections which refers to this paragraph: $130.00.

§ 1.28(c)(3)—for processing a non-itemized fee deficiency based on an error in small entity status.

§ 1.41—for supplying the name or names of the inventor or inventors after the filing date without an oath or declaration as prescribed by § 1.63, except in provisional applications.

§ 1.48—for correcting inventorship, except in provisional applications.

§ 1.52(d)—for processing a nonprovisional application filed with a specification in a language other than English.

§ 1.53(b)(3)—to convert a provisional application filed under § 1.53(c) into a nonprovisional application under § 1.53(b).

§ 1.55—for entry of late priority papers.

§ 1.71(g)(2)—for processing a belated amendment under § 1.71(g).

§ 1.99(e)—for processing a belated submission under § 1.99.

§ 1.102(e)—for requesting prioritized examination of an application.

§ 1.103(b)—for requesting limited suspension of action, continued prosecution application for a design patent (§ 1.53(d)).

§ 1.103(c)—for requesting limited suspension of action, request for continued examination (§ 1.114).

§ 1.103(d)—for requesting deferred examination of an application.

§ 1.217—for processing a redacted copy of a paper submitted in the file of an application in which a redacted copy was submitted for the patent application publication.

§ 1.221—for requesting voluntary publication or republication of an application.

§ 1.291(c)(5)—for processing a second or subsequent protest by the same real party in interest.

§ 1.497(d)—for filing an oath or declaration pursuant to 35 U.S.C. 371(c)(4) naming an inventive entity different from the inventive entity set forth in the international stage.

§ 3.81—for a patent to issue to assignee, assignment submitted after payment of the issue fee.

* * * * *

■ 3. Section 1.102 is amended by revising paragraph (a) and adding paragraph (e) to read as follows:

§ 1.102 Advancement of examination.

(a) Applications will not be advanced out of turn for examination or for further action except as provided by this part, or upon order of the Director to expedite the business of the Office, or upon filing of a request under paragraph (b) or (e) of this section or upon filing a petition or request under paragraph (c) or (d) of this section with a showing which, in the opinion of the Director, will justify so advancing it.

* * * * *

(e) A request for prioritized examination under this paragraph may be filed only with an original utility or plant nonprovisional application under 35 U.S.C. 111(a) that is complete as defined by § 1.51(b), with any fees due under § 1.16 paid on filing. If the application is a utility application, it must be filed via the Office's electronic filing system (EFS–Web). A request for prioritized examination under this paragraph must be present upon filing and must be accompanied by the prioritized examination fee set forth in § 1.17(c), the processing fee set forth in § 1.17(i), and the publication fee set forth in § 1.18(d). Prioritized examination under this paragraph will not be accorded to a design application or reissue application, and will not be accorded to any application that contains or is amended to contain more than four independent claims, more than thirty total claims, or any multiple dependent claim.

Dated: March 23, 2011.

David J. Kappos,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2011–7807 Filed 4–1–11; 8:45 am]

BILLING CODE 3510–16–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[EPA–HQ–OAR–2006–0534; FRL–9289–6]

RIN 2060–AQ24

Standards of Performance for New Stationary Sources and Emissions Guidelines for Existing Sources: Hospital/Medical/Infectious Waste Incinerators

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; amendments.

SUMMARY: On October 6, 2009, EPA promulgated its response to the remand of the new source performance standards and emissions guidelines for hospital/medical/infectious waste incinerators by the U.S. Court of Appeals for the District of Columbia Circuit and satisfied the Clean Air Act section 129(a)(5) requirement to conduct

a review of the standards every 5 years. This action promulgates amendments to the new source performance standards and emissions guidelines, correcting inadvertent drafting errors in the nitrogen oxides and sulfur dioxide emissions limits for large hospital/medical/infectious waste incinerators in the new source performance standards, which did not correspond to our description of our standard-setting process, correcting erroneous cross-references in the reporting and recordkeeping requirements in the new source performance standards, clarifying that compliance with the emission guidelines must be expeditious if a compliance extension is granted, correcting the inadvertent omission of delegation of authority provisions in the emission guidelines, correcting errors in the units' description for several emissions limits in the emission guidelines and new source performance standards, and removing extraneous text from the hydrogen chloride emissions limit for large hospital/medical/infectious waste incinerators in the emission guidelines.

DATES: This rule is effective as of May 4, 2011.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–HQ–OAR–2006–0534 and Legacy Docket ID Number A–91–61. 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.,* confidential business information or other information which disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy form. Publicly available docket materials are available either electronically at *http://www.regulations.gov* or in hard copy at the EPA Docket Center EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20460. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA Docket Center is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Hambrick, Fuels and Incineration Group, Sector Policies and Programs Division (E143–03), Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–0964; facsimile number: (919) 541–3470; e-mail address: *hambrick.amy@epa.gov.*

SUPPLEMENTARY INFORMATION:

Organization of This Document. The following outline is provided to aid in locating information in this preamble.

A red-line version of the regulatory language that incorporates the changes in this action is available in the docket.

I. General Information

A. Does the final action apply to me?

Regulated Entities. Categories and entities potentially affected by the final action are those which operate hospital/medical/infectious waste incinerators (HMIWI). The new source performance standards (NSPS) and emissions guidelines (EG) for HMIWI affect the following categories of sources:

Category	NAICS code	Examples of potentially regulated entities
Industry	622110 622310 325411 325412 562213 611310	Private hospitals, other health care facilities, commercial research laboratories, commercial waste disposal companies, private universities.
Federal Government	622110 541710 928110	Federal hospitals, other health care facilities, public health service, armed services.
State/local/tribal Government	622110 562213 611310	State/local hospitals, other health care facilities, state/local waste disposal services, state universities.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by the final action. To determine whether your facility would be affected by the final action, you should examine the applicability criteria in 40 CFR 60.50c of subpart Ec. If you have any questions regarding the applicability of the final action to a particular entity, contact the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. Where can I get a copy of this document?

In addition to being available in the docket, an electronic copy of the final action is available on the Worldwide Web through the Technology Transfer Network Web site (TTN Web). Following signature, EPA posted a copy of the final action on the TTN's policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg.* The TTN Web provides information and technology exchange in various areas of air pollution control.

C. Judicial Review

Under section 307(b)(1) of the Clean Air Act (CAA or Act), judicial review of

this final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit (the Court) by June 3, 2011. Under section 307(d)(7)(B) of the CAA, only an objection to this final rule that was raised with reasonable specificity during the period for public comment can be raised during judicial review. Section 307(d)(7)(B) of the CAA also provides a mechanism for EPA to convene a proceeding for reconsideration, "[i]f the person raising an objection can demonstrate to EPA that it was impracticable to raise such objection within [the period for public comment] or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule." Any person seeking to make such a demonstration to us should submit a Petition for Reconsideration to the Office of the Administrator, Environmental Protection Agency, Room 3000, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460, with a copy to the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20004. Moreover, under section 307(b)(2) of the CAA, the requirements established by this final rule may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce these requirements.

II. Background

On September 15, 1997, EPA adopted NSPS (40 CFR part 60, subpart Ec) and EG (40 CFR part 60, subpart Ce) for HMIWI under the authority of sections 111 and 129 of the CAA. Emissions standards were adopted for the nine pollutants required to be regulated under CAA section 129—particulate matter (PM), lead (Pb), cadmium (Cd), mercury (Hg), chlorinated dibenzo-p-dioxins/dibenzofurans, carbon monoxide, nitrogen oxides (NO_X), hydrogen chloride (HCl), and sulfur dioxide (SO_2). The EPA developed emissions limits for all nine pollutants for three HMIWI size subcategories (large, medium, and small) for the NSPS and four HMIWI size subcategories (large, medium, small, and small rural) for the EG.

On March 2, 1999, the Court in *Sierra Club* v. *EPA,* 167 F.3d 658 (DC Cir. 1999) remanded the rule to EPA for further explanation regarding how EPA derived the maximum achievable control technology floors for new and existing HMIWI. The Court did not vacate the regulations, and the regulations remained in effect during the remand.

On October 6, 2009, EPA promulgated its response to the Court's remand of the HMIWI regulations and also satisfied its requirement under CAA section 129(a)(5) to conduct a 5-year review of the HMIWI standards. The promulgated rule revised the NSPS and EG emissions limits for all nine of the CAA section 129 pollutants.

Following promulgation of the revised emissions limits, an industry representative informed EPA of an error in the published NSPS emissions limit for NO_X for large HMIWI, which did not appear to reflect EPA's described analytical process for adopting the revised standards. On review, EPA staff determined that the published revised NO_X NSPS for large HMIWI indeed did not reflect EPA's intent in the final rule. EPA reviewed the other published NSPS and EG emissions limits for similar errors, and determined that the published revised SO_2 NSPS for large HMIWI also did not reflect EPA's intent in the final rule. Also after promulgation, a state agency representative informed EPA of an error in the published NSPS reporting and recordkeeping requirements, which incorrectly referred to § 60.56, instead of § 60.56c, in three separate paragraphs.

To correct these errors, EPA issued proposed amendments on May 14, 2010, to the NSPS emissions limits for NO_X and SO_2 for large HMIWI and the NSPS reporting and recordkeeping provisions that have the incorrect cross-reference (75 FR 27249 (May 14, 2010)). EPA provided a public comment period that closed on June 28, 2010. No public comments were received on the proposed amendments during that period. Consequently, today's final action promulgates the amendments as proposed, for the reasons explained in the proposal.

Just prior to proposal of the May 14, 2010, amendments (but too late to be addressed in the proposed rule), EPA staff discovered that the HMIWI rule should be revised to clarify that compliance with the EG must be expeditious if a compliance extension is granted. After proposal of the May 14, 2010, amendments, EPA staff also noted that delegation of authority provisions had been inadvertently omitted from the EG for existing HMIWI. A state agency later informed EPA of an error in the units' description for the Cd and Hg emissions limits in Table 1B to subpart Ec (NSPS). EPA reviewed the other emissions limits tables in the NSPS and EG and found similar errors in the units descriptions for other emissions limits. To address these errors and omissions, EPA is issuing additional amendments to the NSPS and EG, to be effective upon the effective date of this final rule specified above.

III. Summary of the Final Amendments

A. Nitrogen Oxides Emissions Limit

EPA received no public comments regarding its proposed amendment to the NO_X NSPS limit for new large HMIWI. For the reasons explained in the proposed rule (see 75 FR at 27251/col. 2–27252/col. 1), today's final action amends the HMIWI NSPS to include the correct NO_X NSPS limit of 140 parts per million by volume (ppmv) for new large HMIWI, which matches the final NO_X EG limit and reflects EPA's intent in the October 6, 2009, final rule.

B. Sulfur Dioxide Emissions Limit

EPA also received no public comments on its proposed amendment to the SO_2 NSPS for new large HMIWI. For the reasons explained in the proposed rule (see 75 FR at 27252/cols. 1–2), this final action amends the HMIWI NSPS to include the correct SO_2 limit of 8.1 ppmv for new large HMIWI, which reflects EPA's intent in the October 6, 2009, final rule.

C. Reporting and Recordkeeping Requirements

The NSPS reporting and recordkeeping requirements of the October 6, 2009, final rule include three separate cross-references to "§ 60.56(d), (h), or (j)." The correct cross-reference in each case should have been "§ 60.56c(d), (h), or (j)," consistent with the section numbering format for NSPS subpart Ec. EPA received no public comments on its proposed correction to the cross-references. This final action amends the HMIWI NSPS to correctly cross-reference to sections 60.56c(d), (h), or (j).

D. Expeditious Compliance

Section 129(f)(2) of the CAA states that performance standards and other requirements promulgated pursuant to this section and Section 111 and applicable to existing solid waste incineration units shall be effective as expeditiously as practicable after approval of a State plan under subsection (b)(2) (or promulgation of a plan by the Administrator under subsection (b)(3)) but in no event later than 3 years after the State plan is approved or 5 years after the date such standards or requirements are promulgated, whichever is earlier.

Just prior to proposal of the May 14, 2010, amendments (but too late to be addressed in the proposed rule), EPA staff discovered that paragraph (d)(3) of § 60.39e (compliance times) should be revised to clarify that compliance with the guidelines must be expeditious if a compliance extension is granted. We are amending the HMIWI EG to include this clarifying language. Specifically, we are adding the word "expeditious" to § 60.39e(d)(3) to state that if an extension is granted, require expeditious compliance with the emissions guidelines on or before the date 3 years after EPA approval of the State plan (but not later than September 16, 2002), for the emissions guidelines as promulgated on September 15, 1997, and on or before the date 3 years after EPA approval of an amended State plan (but not later than October 6, 2014), for the emissions guidelines as amended on October 6, 2009.

This action will ensure that compliance with the EG will be "expeditious," consistent with the requirements of CAA section 129(f)(2).

E. Delegation of Authority Provisions

Provisions regarding delegation of implementation and enforcement authorities are already present in the NSPS for new HMIWI. The NSPS delegation of authority provisions in the October 6, 2009, final rule specify that the following authorities are to be retained by the Administrator and not transferred to a state:

- The requirements of § 60.56c(i) establishing operating parameters when using controls other than those listed in § 60.56c(d).
- Approval of alternative methods of demonstrating compliance under § 60.8 including:
  - Approval of continuous emissions monitoring system (CEMS) for PM, HCl, multi-metals, and Hg where used for purposes of demonstrating compliance,
  - Approval of continuous automated sampling systems for dioxin/furan and Hg where used for purposes of demonstrating compliance, and
  - Approval of major alternatives to test methods;
- Approval of major alternatives to monitoring;
- Waiver of recordkeeping requirements; and
- Performance test and data reduction waivers under § 60.8(b).

Following the May 14, 2010, proposal of amendments to the October 6, 2009, final rule, EPA staff discovered that delegation of authority provisions had been inadvertently omitted from the EG. We are amending the HMIWI EG to include these delegations of authority provisions. Specifically, we are adding a paragraph to § 60.32e of the EG stating that the authorities listed under § 60.50c(i) of the NSPS are to be retained by the Administrator and not be transferred to a state. This action will ensure consistency between the NSPS and EG regarding the implementation and enforcement authorities and avoid any confusion about which authorities can be delegated and exercised by the states and which authorities must be retained by EPA.

F. Units Descriptions of Emissions Limits

EPA was informed by a state agency post-proposal that the units' description for the Cd and Hg emissions limits in Table 1B to subpart Ec (NSPS) included both the concentration units and the not-promulgated percent reduction alternative. Table 1B to subpart Ec includes the amended emissions limits for new HMIWI in the October 6, 2009, final rule, which appropriately do not include a not-promulgated percent reduction alternative.

We are amending Table 1B to subpart Ec effective immediately to remove the units' description for the not-promulgated percent reduction alternative and avoid any confusion regarding the elimination of the percent reduction alternative for new HMIWI in the October 6, 2009, final rule.

EPA found similar errors after reviewing the other emissions limits tables in the NSPS and EG. First, the October 6, 2009, amendments to Table 1A to subpart Ce (EG) mistakenly removed the units' description for the previously promulgated percent reduction alternative for HCl, Pb, Cd, and Hg. Table 1A to subpart Ce includes the emissions limits from the September 15, 1997, EG, including the percent reduction alternative, to which existing HMIWI are subject until revised or new state plans are issued based on the October 6, 2009, amendments (which do not include the percent reduction alternative).

Second, the October 6, 2009, amendments to Table 1A to subpart Ec (NSPS) mistakenly removed the units' description for the previously promulgated percent reduction alternative for HCl and Pb. Table 1A to subpart Ec includes the emissions limits from the September 15, 1997, NSPS, including the percent reduction alternative. Those emissions limits apply to HMIWI that commenced construction after June 20, 1996, but no later than December 1, 2008, or commenced modification after March 16, 1998, but no later than April 6, 2010, except where the emissions limits in the amended EG are more stringent.

We are amending Table 1A to subpart Ce and Table 1A to subpart Ec to restore the units' description for the percent reduction alternative for these pollutants and avoid any confusion regarding the use of a percent reduction alternative for existing and new HMIWI under the original September 15, 1997, rule.

G. Extraneous Text

In the course of reviewing the unit's descriptions of the emissions limits, we discovered that some extraneous text had been included with the HCl NSPS limit for new large HMIWI in Table 1A to subpart Ec. (As noted previously, Table 1A to subpart Ec includes the emissions limits from the September 15, 1997, NSPS.) We are amending Table 1A to subpart Ec to remove the extraneous text and thereby avoid any confusion regarding the HCl NSPS limit for new large HMIWI in Table 1A to subpart Ec.

IV. Impacts of the Final Action

Based on the stringency of the HMIWI standards promulgated on October 6, 2009, sources would likely respond to the HMIWI rule by choosing not to construct new HMIWI and would use alternative waste disposal options rather than incur the costs of compliance. Considering this information, we do not anticipate any new HMIWI, and, therefore, no costs or impacts are associated with the final NSPS amendments for NO_X and SO_2 for new large units.

However, in the unlikely event that a new unit is constructed, we estimated costs and impacts expected for each of three HMIWI model plants (large, medium, and small), which we entered into the docket for the October 6, 2009, promulgation. (See 2009 memoranda entitled "Revised Compliance Costs and Economic Inputs for New HMIWI" and "Revised Baseline Emissions and Emissions Reductions for Existing and New HMIWI," which are included in the docket.) We estimated baseline NO_X emissions of 80 ppmv and baseline SO_2 emissions of 0.84 ppmv for the large HMIWI model plant, based on the average NO_X and SO_2 emissions measured at the latest large HMIWI to be installed since the 1997 rule. Consequently, the NO_X and SO_2 emissions associated with the large HMIWI model plant are already below both the incorrect NO_X and SO_2 emissions limits of 130 ppmv and 1.6 ppmv, respectively, promulgated in the October 6, 2009, **Federal Register** notice, and the correct NO_X and SO_2

emissions limits of 140 ppmv and 8.1 ppmv, respectively, being promulgated in today's action. Therefore, even if a new large unit were constructed, we would estimate no cost savings or negative impacts associated with today's final amendments to the NO_X and SO_2 emissions limits for new large HMIWI.

None of the other amendments in today's final action change the requirements of the HMIWI rule, and, therefore, will not result in any impacts.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This final action is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is, therefore, not subject to review under the Executive Order.

B. Paperwork Reduction Act

This final action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* Burden is defined at 5 CFR 1320.3(b). This final action only includes revised NO_X and SO_2 emissions limits for new large HMIWI, and, as noted previously, no new HMIWI are anticipated. Consequently, this final action will not impose any additional information collection burden for new sources.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedures 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 this final action on small entities, small entity is defined as follows: (1) A small business as defined by the Small Business Administration's 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; or (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this final rule on small entities, I certify that this final action will not have a significant economic impact on a substantial number of small entities. This final rule will not impose any requirements on small entities. This final action only includes revised NO_X and SO_2 emissions limits for new large HMIWI, and no new HMIWI are anticipated.

D. Unfunded Mandates Reform Act

This action contains no federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act (UMRA), 2 U.S.C. 1531–1538 for state, local, or tribal governments, or the private sector. This final action imposes no enforceable duty on any state, local, or tribal governments, or the private sector. Therefore, this final action is not subject to the requirements of sections 202 or 205 of the UMRA.

This final 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. Because this final rule's requirements apply equally to HMIWI units owned and/or operated by governments or HMIWI units owned and/or operated by private entities, there would be no requirements that uniquely apply to such government or impose any disproportionate impacts on them.

E. Executive Order 13132: Federalism

This final rule does not have federalism implications. It 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, as specified in Executive Order 13132. This final action will not impose substantial direct compliance costs on state or local governments, and will not preempt state law. Thus, Executive Order 13132 does not apply to this rule.

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

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249; November 9, 2000). EPA is not aware of any HMIWI owned or operated by Indian tribal governments. Thus, Executive Order 13175 does not apply to this final action.

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

EPA interprets Executive Order 13045 (62 FR 19885; April 23, 1997) as applying to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it is based solely on technology performance.

H. Executive Order 13211: Actions 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(d) (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. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by VCS bodies. The NTTAA directs EPA to provide Congress, through the Office of Management and Budget, explanations when the Agency decides not to use available and applicable VCS.

This action does not involve technical standards. Therefore, EPA did not consider the use of any VCS.

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 (EJ). Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make EJ 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 final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This rule amendment

affects only new large units, and no new units are anticipated to be constructed. This rule amendment does not relax the control measures on sources regulated by the rule will therefore not cause emissions increased from these sources.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801, *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the United States. EPA will submit a report containing this final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This final rule will be effective on May 4, 2011.

List of Subjects in 40 CFR Part 60

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: March 29, 2011.

Lisa P. Jackson,

Administrator.

For the reasons stated in the preamble, Title 40, chapter I, part 60 of the Code of Federal Regulations is amended as follows:

PART 60—[AMENDED]

■ 1. The authority citation for part 60 continues to read as follows:

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

Subpart Ce—[Amended]

■ 2. Section 60.32e is amended by adding paragraph (k) to read as follows:

§ 60.32e Designated facilities.

* * * * *

(k) The authorities listed under § 60.50c(i) shall be retained by the Administrator and not be transferred to a state.

■ 3. Section 60.39e is amended by revising paragraph (d)(3) to read as follows:

§ 60.39e Compliance times.

* * * * *

(d) * * *

(3) If an extension is granted, require expeditious compliance with the emissions guidelines on or before the date 3 years after EPA approval of the state plan (but not later than September 16, 2002), for the emissions guidelines as promulgated on September 15, 1997, and on or before the date 3 years after EPA approval of an amended state plan (but not later than October 6, 2014), for the emissions guidelines as amended on October 6, 2009.

* * * * *

■ 4. Table 1A to subpart Ce is revised to read as follows:

TABLE 1A TO SUBPART Ce OF PART 60—EMISSIONS LIMITS FOR SMALL, MEDIUM, AND LARGE HMIWI AT DESIGNATED FACILITIES AS DEFINED IN § 60.32e(a)(1)

Pollutant	Units (7 percent oxygen, dry basis)	Emissions limits			Averaging time [1]	Method for demonstrating compliance [2]
		HMIWI size				
		Small	Medium	Large		
Particulate matter	Milligrams per dry standard cubic meter (mg/dscm) (grains per dry standard cubic foot (gr/dscf)).	115 (0.05)	69 (0.03)	34 (0.015)	3-run average (1-hour minimum sample time per run).	EPA Reference Method 5 of appendix A–3 of part 60, or EPA Reference Method 26A or 29 of appendix A–8 of part 60.
Carbon monoxide	Parts per million by volume (ppmv).	40	40	40	3-run average (1-hour minimum sample time per run).	EPA Reference Method 10 or 10B of appendix A–4 of part 60.
Dioxins/furans	Nanograms per dry standard cubic meter total dioxins/furans (ng/dscm) (grains per billion dry standard cubic feet (gr/10^9 dscf)) or ng/dscm TEQ (gr/10^9 dscf).	125 (55) or 2.3 (1.0).	125 (55) or 2.3 (1.0).	125 (55) or 2.3 (1.0).	3-run average (4-hour minimum sample time per run).	EPA Reference Method 23 of appendix A–7 of part 60.
Hydrogen chloride	ppmv or percent reduction.	100 or 93%	100 or 93%	100 or 93%	3-run average (1-hour minimum sample time per run).	EPA Reference Method 26 or 26A of appendix A–8 of part 60.
Sulfur dioxide	ppmv	55	55	55	3-run average (1-hour minimum sample time per run).	EPA Reference Method 6 or 6C of appendix A–4 of part 60.
Nitrogen oxides	ppmv	250	250	250	3-run average (1-hour minimum sample time per run).	EPA Reference Method 7 or 7E of appendix A–4 of part 60.
Lead	mg/dscm (grains per thousand dry standard cubic feet (gr/10^3 dscf)) or percent reduction.	1.2 (0.52) or 70%	1.2 (0.52) or 70%	1.2 (0.52) or 70%	3-run average (1-hour minimum sample time per run).	EPA Reference Method 29 of appendix A–8 of part 60.
Cadmium	mg/dscm (gr/10^3 dscf) or percent reduction.	0.16 (0.07) or 65%	0.16 (0.07) or 65%	0.16 (0.07) or 65%	3-run average (1-hour minimum sample time per run).	EPA Reference Method 29 of appendix A–8 of part 60.

TABLE 1A TO SUBPART Ce OF PART 60—EMISSIONS LIMITS FOR SMALL, MEDIUM, AND LARGE HMIWI AT DESIGNATED FACILITIES AS DEFINED IN § 60.32e(a)(1)—Continued

Pollutant	Units (7 percent oxygen, dry basis)	Emissions limits			Averaging time [1]	Method for demonstrating compliance [2]
		HMIWI size				
		Small	Medium	Large		
Mercury	mg/dscm (gr/10[3] dscf) or percent reduction.	0.55 (0.24) or 85%	0.55 (0.24) or 85%	0.55 (0.24) or 85%	3-run average (1-hour minimum sample time per run).	EPA Reference Method 29 of appendix A–8 of part 60.

[1] Except as allowed under § 60.56c(c) for HMIWI equipped with CEMS.
[2] Does not include CEMS and approved alternative non-EPA test methods allowed under § 60.56c(b).

Subpart Ec—[Amended]

■ 5. Section 60.58c is amended by revising paragraphs (d)(1) through (3) to read as follows:

§ 60.58c Reporting and recordkeeping requirements.

* * * * *

(d) * * *

(1) The values for the site-specific operating parameters established pursuant to § 60.56c(d), (h), or (j), as applicable.

(2) The highest maximum operating parameter and the lowest minimum operating parameter, as applicable, for each operating parameter recorded for the calendar year being reported, pursuant to § 60.56c(d), (h), or (j), as applicable.

(3) The highest maximum operating parameter and the lowest minimum operating parameter, as applicable, for each operating parameter recorded pursuant to § 60.56c(d), (h), or (j) for the calendar year preceding the year being reported, in order to provide the Administrator with a summary of the performance of the affected facility over a 2-year period.

* * * * *

■ 6. Table 1A to subpart Ec is revised to read as follows:

TABLE 1A TO SUBPART Ec OF PART 60—EMISSIONS LIMITS FOR SMALL, MEDIUM, AND LARGE HMIWI AT AFFECTED FACILITIES AS DEFINED IN § 60.50c(a)(1) AND (2)

Pollutant	Units (7 percent oxygen, dry basis)	Emissions limits			Averaging time [1]	Method for demonstrating compliance [2]
		HMIWI size				
		Small	Medium	Large		
Particulate matter	Milligrams per dry standard cubic meter (grains per dry standard cubic foot).	69 (0.03)	34 (0.015)	34 (0.015)	3-run average (1-hour minimum sample time per run).	EPA Reference Method 5 of appendix A–3 of part 60, or EPA Reference Method M 26A or 29 of appendix A–8 of part 60.
Carbon monoxide	Parts per million by volume.	40	40	40	3-run average (1-hour minimum sample time per run).	EPA Reference Method 10 or 10B of appendix A–4 of part 60.
Dioxins/furans	Nanograms per dry standard cubic meter total dioxins/furans (grains per billion dry standard cubic feet) or nanograms per dry standard cubic meter TEQ (grains per billion dry standard cubic feet).	125 (55) or 2.3 (1.0).	25 (11) or 0.6 (0.26).	25 (11) or 0.6 (0.26).	3-run average (4-hour minimum sample time per run).	EPA Reference Method 23 of appendix A–7 of part 60.
Hydrogen chloride	Parts per million by volume or percent reduction.	15 or 99%	15 or 99%	15 or 99%	3-run average (1-hour minimum sample time per run).	EPA Reference Method 26 or 26A of appendix A–8 of part 60.
Sulfur dioxide	Parts per million by volume.	55	55	55	3-run average (1-hour minimum sample time per run).	EPA Reference Method 6 or 6C of appendix A–4 of part 60.
Nitrogen oxides	Parts per million by volume.	250	250	250	3-run average (1-hour minimum sample time per run).	EPA Reference Method 7 or 7E of appendix A–4 of part 60.
Lead	Milligrams per dry standard cubic meter (grains per thousand dry standard cubic feet) or percent reduction.	1.2 (0.52) or 70%	0.07 (0.03) or 98%	0.07 (0.03) or 98%	3-run average (1-hour minimum sample time per run).	EPA Reference Method 29 of appendix A–8 of part 60.
Cadmium	Milligrams per dry standard cubic meter (grains per thousand dry standard cubic feet) or percent reduction.	0.16 (0.07) or 65%	0.04 (0.02) or 90%	0.04 (0.02) or 90%	3-run average (1-hour minimum sample time per run).	EPA Reference Method 29 of appendix A–8 of part 60.

TABLE 1A TO SUBPART Ec OF PART 60—EMISSIONS LIMITS FOR SMALL, MEDIUM, AND LARGE HMIWI AT AFFECTED FACILITIES AS DEFINED IN § 60.50c(a)(1) AND (2)—Continued

Pollutant	Units (7 percent oxygen, dry basis)	Emissions limits			Averaging time [1]	Method for demonstrating compliance [2]
		HMIWI size				
		Small	Medium	Large		
Mercury	Milligrams per dry standard cubic meter (grains per thousand dry standard cubic feet) or percent reduction.	0.55 (0.24) or 85%	0.55 (0.24) or 85%	0.55 (0.24) or 85%	3-run average (1-hour minimum sample time per run).	EPA Reference Method 29 of appendix A–8 of part 60.

[1] Except as allowed under § 60.56c(c) for HMIWI equipped with CEMS.
[2] Does not include CEMS and approved alternative non-EPA test methods allowed under § 60.56c(b).

■ 7. Table 1B to Subpart Ec is revised to read as follows:

TABLE 1B TO SUBPART Ec OF PART 60—EMISSIONS LIMITS FOR SMALL, MEDIUM, AND LARGE HMIWI AT AFFECTED FACILITIES AS DEFINED IN § 60.50c(a)(3) AND (4)

Pollutant	Units (7 percent oxygen, dry basis)	Emissions limits			Averaging time [1]	Method for demonstrating compliance [2]
		HMIWI size				
		Small	Medium	Large		
Particulate matter	Milligrams per dry standard cubic meter (grains per dry standard cubic foot).	66 (0.029)	22 (0.0095)	18 (0.0080)	3-run average (1-hour minimum sample time per run).	EPA Reference Method 5 of appendix A–3 of part 60, or EPA Reference Method M 26A or 29 of appendix A–8 of part 60.
Carbon monoxide	Parts per million by volume.	20	1.8	11	3-run average (1-hour minimum sample time per run).	EPA Reference Method 10 or 10B of appendix A–4 of part 60.
Dioxins/furans	Nanograms per dry standard cubic meter total dioxins/furans (grains per billion dry standard cubic feet) or nanograms per dry standard cubic meter TEQ (grains per billion dry standard cubic feet).	16 (7.0) or 0.013 (0.0057).	0.47 (0.21) or 0.014 (0.0061).	9.3 (4.1) or 0.035 (0.015).	3-run average (4-hour minimum sample time per run).	EPA Reference Method 23 of appendix A–7 of part 60.
Hydrogen chloride	Parts per million by volume.	15	7.7	5.1	3-run average (1-hour minimum sample time per run).	EPA Reference Method 26 or 26A of appendix A–8 of part 60.
Sulfur dioxide	Parts per million by volume.	1.4	1.4	8.1	3-run average (1-hour minimum sample time per run).	EPA Reference Method 6 or 6C of appendix A–4 of part 60.
Nitrogen oxides	Parts per million by volume.	67	67	140	3-run average (1-hour minimum sample time per run).	EPA Reference Method 7 or 7E of appendix A–4 of part 60.
Lead	Milligrams per dry standard cubic meter (grains per thousand dry standard cubic feet).	0.31 (0.14)	0.018 (0.0079)	0.00069 (0.00030)	3-run average (1-hour minimum sample time per run).	EPA Reference Method 29 of appendix A–8 of part 60.
Cadmium	Milligrams per dry standard cubic meter (grains per thousand dry standard cubic feet).	0.017 (0.0074)	0.0098 (0.0043)	0.00013 (0.000057).	3-run average (1-hour minimum sample time per run).	EPA Reference Method 29 of appendix A–8 of part 60.
Mercury	Milligrams per dry standard cubic meter (grains per thousand dry standard cubic feet).	0.014 (0.0061)	0.0035 (0.0015)	0.0013 (0.00057)	3-run average (1-hour minimum sample time per run).	EPA Reference Method 29 of appendix A–8 of part 60.

[1] Except as allowed under § 60.56c(c) for HMIWI equipped with CEMS.
[2] Does not include CEMS and approved alternative non-EPA test methods allowed under § 60.56c(b).

[FR Doc. 2011–7899 Filed 4–1–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 75

Continuous Emission Monitoring

CFR Correction

In Title 40 of the Code of Federal Regulations, Parts 72 to 80, revised as of July 1, 2010, on page 219, in § 75.11, paragraph (f) is added to read as follows:

§ 75.11 Specific provisions for monitoring SO_2 emissions.

* * * * *

(f) *Other units.* The owner or operator of an affected unit that combusts wood, refuse, or other material in addition to oil or gas shall comply with the monitoring provisions for coal-fired units specified in paragraph (a) of this section, except where the owner or operator has an approved petition to use the provisions of paragraph (e)(1) of this section.

[FR Doc. 2011–8004 Filed 4–1–11; 8:45 am]

BILLING CODE 1505–01–D

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 09–123; RM–11546, DA 11–501]

Television Broadcasting Services; New Haven, CT

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission grants a petition for rulemaking filed by Connecticut Public Broadcasting, Inc. ("CPBI"), the licensee of noncommercial educational station WEDY, New Haven, Connecticut, requesting the substitution of channel *41 for channel *6 at New Haven. CPBI's channel *6 facility is subject to substantial levels of new interference from other post-transition stations' power increases, and the substitution of channel *41 will resolve any interference being experienced by CPBI's viewers.

DATES: This rule is effective May 4, 2011.

FOR FURTHER INFORMATION CONTACT: Joyce L. Bernstein, *joyce.bernstein@fcc.gov,* Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MB Docket No. 09–123, adopted March 15, 2011, and released March 16, 2011. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC 20554. This document will also be available via ECFS (*http://fjallfoss.fcc.gov/ecfs/*). This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–478–3160 or via the company's Web site, *http://www.bcipweb.com.* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Television.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

Final Rule

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336, and 339.

§ 73.622 [Amended]

■ 2. Section 73.622(i), the Post-Transition Table of DTV Allotments under Connecticut, is amended by adding channel *41 and removing channel *6 at New Haven.

[FR Doc. 2011–7789 Filed 4–1–11; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 001005281–0369–02]

RIN 0648–XA01

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Closure

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS closes the northern Florida west coast subzone to the commercial harvest of king mackerel in or from the exclusive economic zone (EEZ). This closure is necessary to protect the Gulf king mackerel resource.

DATES: This rule is effective 12:01 a.m., local time, April 04, 2011, until 12:01 a.m., local time, July 1, 2011, unless changed by further notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Susan Gerhart, *telephone:* 727–824–5305, or e-mail: *susan.gerhart@noaa.gov.*

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, cero, cobia, little tunny, and, in the Gulf of Mexico (Gulf) only, dolphin and bluefish) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

On April 27, 2000, NMFS implemented the final rule (65 FR 16336, March 28, 2000) that divided the Florida west coast subzone of the Gulf

of Mexico eastern zone into northern and southern subzones, and established their separate commercial quotas. The northern Florida west coast subzone is located in Federal waters of the Gulf north of 26°19.8′ N lat. (a line directly west from the Lee/Collier County, FL boundary) and east of 87°31.1′ W long. (a line directly south from the Alabama/Florida boundary). The quota for the northern subzone is 168,750 lb (76,544 kg) (50 CFR 622.42(c)(1)(ii)).

In accordance with 50 CFR 622.43(a), NMFS is required to close any zone to the commercial harvest of king mackerel when the zone's quota has been reached, or is projected to be reached, by filing a notification with the Office of the Federal Register. NMFS has determined the commercial quota for Gulf group king mackerel in the northern Florida west coast subzone will be reached by April 04, 2011. Accordingly, commercial fishing for Gulf group king mackerel in the northern Florida west coast subzone is closed effective 12:01 a.m., local time, April 04, 2011, until 12:01 a.m., local time, July 1, 2011, the end of the current fishing year.

During the closure period, no person aboard a vessel for which a commercial permit for king mackerel has been issued may fish for or retain Gulf group king mackerel in Federal waters of the closed subzone. There is one exception, however, for a person aboard a charter vessel or headboat. A person aboard a vessel that has a valid charter/headboat permit and also has a commercial king mackerel permit for coastal migratory pelagic fish may continue to retain king mackerel in or from the closed subzone under the 2-fish daily bag limit, provided the vessel is operating as a charter vessel or headboat. Charter vessels or headboats that hold a commercial king mackerel permit are considered to be operating as a charter vessel or headboat when they carry a passenger who pays a fee or when more than three persons are aboard, including operator and crew.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds the need to immediately implement this commercial closure constitutes good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth in 5 U.S.C. 553(b)(B), as such procedures would be unnecessary and contrary to the public interest. Such procedures would be unnecessary because the rule itself already has been subject to notice and comment, and all that remains is to notify the public of the closure.

Allowing prior notice and opportunity for public comment is contrary to the public interest because of the need to immediately implement this action to protect the fishery resource because the capacity of the commercial fleet allows for rapid harvest of the quota. Prior notice and opportunity for public comment would require time and potentially result in a harvest well in excess of the established quota.

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

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

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

Dated: March 30, 2011.

Margo Schulze-Haugen,

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

[FR Doc. 2011–7930 Filed 3–30–11; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 100317152–0176–01]

RIN 0648–XA327

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries

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

ACTION: Temporary rule; inseason Angling category retention limit adjustment; southern area trophy fishery closure.

SUMMARY: NMFS has determined that the Atlantic bluefin tuna (BFT) daily retention limit should be adjusted for the remainder of 2011, based on consideration of the regulatory determination criteria regarding inseason adjustments and based on North Carolina Tagging Program data. These actions apply to vessels permitted in the Highly Migratory Species (HMS) Angling category and Charter/Headboat category (when fishing recreationally for BFT). NMFS also closes the southern area Angling category fishery for large medium and giant ("trophy") BFT. These actions are being taken consistent with the BFT fishery management objectives of the 2006 Consolidated HMS Fishery Management Plan and to prevent overharvest of the 2011 Angling category quota.

DATES: Effective April 2, 2011, through December 31, 2011.

FOR FURTHER INFORMATION CONTACT: Brad McHale, 978–281–9260.

SUPPLEMENTARY INFORMATION:

Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27 subdivides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) among the various domestic fishing categories, per the allocations established in the 2006 Consolidated Highly Migratory Species Fishery Management Plan (2006 Consolidated HMS FMP) (71 FR 58058, October 2, 2006).

The 2011 BFT fishing year, which is managed on a calendar-year basis and subject to an annual calendar-year quota, began January 1, 2011. The Angling category season opened January 1, 2011, and continues through December 31, 2011. Currently, the default Angling category daily retention limit of one school, large school, or small medium BFT (measuring 27 to less than 73 inches (68.5 to less than 185 cm)) applies (§ 635.23(b)(2)). An annual limit of one large medium or giant BFT (73 inches or greater) per vessel also applies (§ 635.23(b)(1)). These retention limits apply to HMS Angling and HMS Charter/Headboat category permitted vessels (when fishing recreationally for BFT).

In order to implement the 2010 ICCAT-recommended baseline annual U.S. BFT quota, NMFS has published a proposed rule that would modify the U.S. BFT quota and base subquotas for all domestic fishing categories, and establish BFT quota specifications for 2011 (76 FR 13583, March 14, 2011). Until the final rule is effective (likely June 2011), the BFT base quotas codified at § 635.27(a) remain in effect. The currently codified Angling category quota is 187.6 mt (97.7 mt for school BFT, 85.6 mt for large school/small medium BFT, and 4.3 mt for large medium/giant BFT).

Adjustment of Angling Category Daily Retention Limit

Under § 635.23(b)(3), NMFS may increase or decrease the retention limit for any size class of BFT based on consideration of the criteria provided under § 635.27(a)(8), which include: The usefulness of information obtained from catches in the particular category for biological sampling and monitoring of the status of the stock; the catches of the particular category quota to date and the likelihood of closure of that segment of the fishery if no adjustment is made; the projected ability of the vessels fishing under the particular category quota to harvest the additional amount of BFT before the end of the fishing year; the estimated amounts by which quotas for other gear categories of the fishery might be exceeded; effects of the adjustment on BFT rebuilding and overfishing; effects of the adjustment on accomplishing the objectives of the fishery management plan; variations in seasonal distribution, abundance, or migration patterns of BFT; effects of catch rates in one area precluding vessels in another area from having a reasonable opportunity to harvest a portion of the category's quota; and a review of dealer reports, daily landing trends, and the availability of the BFT on the fishing grounds. Retention limits may be adjusted separately for specific vessel type, such as private vessels, headboats, or charterboats.

NMFS has considered the set of criteria cited above and their applicability to the Angling category BFT retention limit for the 2011 Angling category fishery. NMFS examined the results of the 2007 through 2010 fishing seasons under the applicable daily retention limits, as well as the observed trend in the recreational fishery toward heavier fish, particularly in the small medium size range (59 to less than 73 inches). Data and dockside observations from 2007 through 2009 indicated a shift in catch to the large school/small medium size class (47 to less than 73 inches (119 to less than 185 cm)), particularly to large school BFT (47 to less than 59 inches (119 to less than 150 cm)) in 2008 and to small medium BFT in 2009. Large school and small medium BFT traditionally have been managed as one size class (47 to less than 73 inches). NMFS has found that as this cohort of fish ages and grows in weight but remains under 73 inches (*i.e.,* the upper range of the large school/small medium size class), the large school/small medium subquota has been attained with fewer fish landed.

In 2010, based on considerations of the available quota, fishery performance in recent years, and the availability of BFT on the fishing grounds, NMFS adjusted the Angling category retention limit to prohibit the retention of small medium BFT (75 FR 33531, June 14, 2010). Recognizing the different nature, needs, and recent landings results of private and charter/headboat vessels, NMFS implemented separate limits for each. Effective June 12 through December 31, 2010, the limit was one school or large school BFT per vessel per day/trip for private vessels (*i.e.,* those with HMS Angling category permits), and was one school BFT and one large school BFT per vessel per day/trip for charter vessels (*i.e.,* those with HMS Charter/Headboat permits, while fishing recreationally for BFT).

In order to constrain landings to the Consolidated HMS FMP-based Angling category allocations, NMFS must implement conservative daily retention limits in 2011. It is important that NMFS constrain landings to BFT subquotas both to adhere to the current FMP quota allocations and to ensure that landings are as consistent as possible with the pattern of fishing mortality (*e.g.,* fish caught at each age) that was assumed in the projections of stock rebuilding.

Information from the North Carolina Tagging Program and from fishery participants indicates that the vast majority of BFT landed recreationally this year have been 59 inches or greater. Comparisons of 2011/2010 catch rates from the North Carolina Tagging program for the month of January indicated rates were considerably slower in January 2011, however comparisons of January–February indicate catch rates have increased dramatically and are on par, if not slightly higher, than those in 2010. Based on considerations of the available quota, fishery performance in recent years, and the availability of BFT on the fishing grounds, it is reasonable to assume that the large school/small medium subquota (and potentially the Angling category quota) would be exceeded under the default daily retention limit. NMFS has determined that the Angling category retention limit should be adjusted to prohibit the retention of small medium BFT, and that implementation of separate limits for private and charter/headboat vessels is appropriate, recognizing the different nature, needs, and recent landings results of the two sectors. For example, charter operators historically have indicated that a multi-fish retention limit is vital to their ability to attract customers. In addition, recent Large Pelagics Survey estimates indicate that charter/headboat BFT landings constitute approximately 25 percent of recent recreational landings, with the remaining 75 percent landed by private vessels. Therefore, for private vessels, *i.e.,* those with HMS Angling category permits, the limit is one school or large school BFT per vessel per day/trip (i.e., one BFT measuring 27 to less than 59 inches). For charter vessels (*i.e.,* those with HMS Charter/Headboat permits), the limit is one school BFT and one large school BFT per vessel per day/trip while fishing recreationally for BFT (*i.e.,* one BFT measuring 27 to less than 47 inches, and one BFT measuring 47 to less than 59 inches). These retention limits will be effective in all areas, except for the Gulf of Mexico, where NMFS prohibits targeted fishing for BFT. Regardless of the duration of a fishing trip, the daily retention limit applies upon landing. NMFS may adjust the daily retention limit further with an inseason action if warranted.

As discussed above, the determination to adjust the daily retention limit is primarily based on the catches of large school/small medium BFT in recent years and the likelihood of closure of that segment of the fishery if no adjustment is made (§ 635.27(a)(8)(ii)), and the anticipated availability of large school/small medium BFT on the fishing grounds (§ 635.27(a)(8)(ix)). NMFS anticipates that reduction of the BFT daily retention limit will result in landings during 2011 that would not exceed the available subquotas as codified in 2010.

Large Medium and Giant "Trophy" Category Fishery; Closure

The 2010 codified BFT quotas provide for 4.3 mt of large medium and giant (trophy) BFT (measuring greater than 73 inches) to be harvested from the regulatory area by vessels fishing under the Angling category quota, with 1.4 mt for the area north of 39°18′ N. lat. (off Great Egg Inlet, NJ) and 2.9 mt for the area south of 39°18′ N. lat.

Based on North Carolina Tagging Program information, NMFS has determined that the codified southern area trophy BFT Angling category subquota has been taken and that a closure of the southern area trophy BFT fishery is warranted at this time. Therefore, fishing for, retaining, possessing, or landing large medium or giant BFT south of 39°18′ N. lat. by persons aboard vessels permitted in the HMS Angling category and the HMS Charter/Headboat category (while fishing recreationally) must cease at 11:30 p.m. local time on April 2, 2011. This action is taken consistent with the regulations at § 635.28(a)(1).

These Angling category actions are intended to provide a reasonable opportunity to harvest the U.S. quota of BFT without exceeding it, while maintaining an equitable distribution of fishing opportunities; and to be consistent with the objectives of the Consolidated HMS FMP.

HMS Angling and HMS Charter/Headboat category permit holders may catch and release (or tag and release) BFT of all sizes, subject to the requirements of the catch-and-release and tag-and-release programs at § 635.26. Anglers are also reminded that all released BFT must be returned to the sea immediately with a minimum of injury and without removing the fish from the water, consistent with requirements at § 635.21(a)(1).

If needed, subsequent Angling category adjustments will be published in the **Federal Register**. In addition, fishermen may call the Atlantic Tunas Information Line at (888) 872–8862 or (978) 281–9260, or access *http://www.hmspermits.gov,* for updates.

Classification

The Assistant Administrator for NMFS (AA) finds that it is impracticable and contrary to the public interest to provide prior notice of, and an opportunity for public comment on, this action for the following reasons:

The regulations implementing the Consolidated HMS FMP provide for inseason retention limit adjustments to respond to the unpredictable nature of BFT availability on the fishing grounds, the migratory nature of this species, and the regional variations in the BFT fishery. Based on available BFT quotas, fishery performance in recent years, and the availability of BFT on the fishing grounds, the reduction in Angling category daily retention limit and closure of the southern area Angling category trophy fishery is necessary to ensure sufficient quota remains available to ensure overall 2011 fishing year landings are consistent with ICCAT recommendations and the 2006 Consolidated HMS FMP. NMFS provides notification of closures and retention limit adjustments by publishing the notice in the **Federal Register,** e-mailing individuals who have subscribed to the Atlantic HMS News electronic newsletter, and updating the information posted on the Atlantic Tunas Information Line and on *http://www.hmspermits.gov.*

These fisheries are currently underway and delaying this action would be contrary to the public interest as it could result in excessive BFT landings that may result in future potential quota reductions for the Angling category and potentially other BFT quota categories, depending on the magnitude of a potential Angling category overharvest. NMFS must close the southern area trophy BFT fishery and preclude small medium BFT landings in all areas before additional landings of these size BFT accumulate. Therefore, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. For all of the above reasons, there is good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness.

This action is being taken under 50 CFR 635.23(b)(3) and 635.28(a)(1), and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: March 30, 2011.

Margo Schulze-Haugen,

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

[FR Doc. 2011–7932 Filed 3–30–11; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 76, No. 64
Monday, April 4, 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 AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 301 and 319

[Docket No. APHIS–2010–0127]

RIN 0579–AD34

Movement of Hass Avocados From Areas Where Mediterranean Fruit Fly or South American Fruit Fly Exist

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to relieve certain restrictions regarding the movement of fresh Hass variety avocados. Specifically, we are proposing to amend our domestic regulations to provide for the interstate movement of Hass avocados from Mediterranean fruit fly quarantined areas in the United States with a certificate if the fruit is safeguarded after harvest in accordance with specific measures. We are also proposing to amend our foreign quarantine regulations to remove trapping requirements for Mediterranean fruit fly for Hass avocados imported from the State of Michoacan, Mexico, requirements for treatment or origin from an area free of Mediterranean fruit fly for Hass avocados imported from Peru, and requirements for trapping or origin from an area free of South American fruit fly for Hass avocados imported from Peru. These actions are warranted in light of research demonstrating the limited host status of Hass avocados to Mediterranean fruit fly and South American fruit fly. This action would make our domestic and foreign requirements for movement of Hass avocados consistent with each other and would relieve restrictions for Mexican and Peruvian Hass avocado producers. In addition, this action would provide a means for Hass avocados to be moved interstate if the avocados originate from a Mediterranean fruit fly quarantined area in the United States.

DATES: We will consider all comments that we receive on or before May 4, 2011.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2010-0127* to submit or view comments and to view supporting and related materials available electronically.
- *Postal Mail/Commercial Delivery:* Please send one copy of your comment to Docket No. APHIS–2010–0127, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2010–0127.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at *http://www.aphis.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Tony Román, Import Specialist, Regulations, Permits, and Manuals, PPQ, APHIS, APHIS, 4700 River Road, Unit 133, Riverdale, MD 20737–1231; (301) 734–0627.

SUPPLEMENTARY INFORMATION:

Background

The domestic fruit fly regulations, contained in 7 CFR 301.32 through 301.32–10 (referred to below as the domestic regulations), were established to prevent the spread of certain fruit fly species, including *Ceratitis capitata* (Mediterranean fruit fly), into noninfested areas of the United States. The regulations designate soil and many fruits, nuts, vegetables, and berries as regulated articles and impose restrictions on the interstate movement of those regulated articles from regulated areas.

Avocado, *Persea americana* (including the variety Hass), is listed as a regulated article for Mediterranean fruit fly, melon fruit fly (*Bactrocera cucurbitae*), Mexican fruit fly (*Anastrepha ludens*), Oriental fruit fly (*Bactrocera dorsalis*), peach fruit fly (*Anastrepha zonata*), and sapote fruit fly (*Anastrepha serpentina*) in the regulations. Because avocados are listed as regulated articles, they may not be moved interstate from an area quarantined for one of those fruit flies unless the movement is authorized by a certificate or limited permit. In general, avocados may be eligible for a certificate if a bait spray is applied to the production site beginning prior to harvest and continuing through the end of harvest or if a post-harvest irradiation treatment is applied to the fruit. To be eligible for a limited permit, a regulated article must be moved to a specific destination for specialized handling, utilization, or processing or for treatment and meet all other applicable provisions of the regulations. For Hass avocados moving interstate from any Mexican fruit fly or sapote fruit fly quarantined area, the avocados may be moved interstate under certificate if the fruit is safeguarded after harvest in accordance with specific measures set out in § 301.32–4(d). We have determined that Hass avocados are a host for Mexican fruit fly and sapote fruit fly only after harvest; these measures are designed to prevent Hass avocados harvested in a quarantined area from being infested with these fruit flies after harvest. Avocados handled in accordance with these measures are thus allowed to move from the quarantined area without further restriction under the certificate.

The regulations in "Subpart–Fruits and Vegetables" (7 CFR 319.56–1 through 319.56–50, referred to below as the import regulations) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of plant pests that are new to or not widely distributed within the United States.

The requirements for importing Hass variety avocados into the United States from Michoacan, Mexico, are described in § 319.56–30. Those requirements include pest surveys and pest risk-reducing practices, treatment, packinghouse procedures, inspection,

and shipping procedures. Although Mediterranean fruit fly is not known to be present in Michoacan, Mexico, the regulations require that trapping be conducted for Mediterranean fruit fly and that any fruit fly finds are reported to the Animal and Plant Health Inspection Service (APHIS).

The regulations in § 319.56–50 allow the importation into the continental United States of Hass avocados from Peru provided that the avocados originate from an area free of Mediterranean fruit fly or that the avocados have been treated for Mediterranean fruit fly in accordance with our phytosanitary treatment regulations in 7 CFR part 305. In addition, the regulations in § 319.56–50 require that the avocados must either originate from an area within Peru that is free of South American fruit fly or an area with low pest prevalence for South American fruit fly and where trapping for South American fruit fly is conducted.

In response to a proposed rule [1] published in the **Federal Register** on January 7, 2009 (74 FR 651–664, Docket No. APHIS–2008–0126), that led to establishment of the Peruvian Hass avocado provisions in § 319.56–50, the national plant protection organization (NPPO) of Peru commented that Hass avocados attached to trees are not hosts for the guava fruit fly (*A. striata*), or the South American fruit fly. In addition, the NPPO commented that there has never been a reported interception of Mediterranean fruit fly in Hass avocados from Peru. In our final rule published in the **Federal Register** and effective on January 4, 2010 (75 FR 1–13), we stated that more research would need to be done in accordance with APHIS's survey and sampling protocol to confirm the commenter's assertion with respect to Mediterranean fruit fly and South American fruit fly; we did, however, acknowledge that guava fruit fly has been demonstrated not to infest Hass avocados. Consequently, we did not finalize our proposed restrictions related to the movement of Hass avocados from areas where the guava fruit fly is present.

In December 2010, the NPPO of Peru, in collaboration with the Peruvian Hass Avocado Growers Association (ProHass), submitted a report [2] supporting the assertion that Hass avocado is not a viable host for Mediterranean fruit fly or South American fruit fly and requested that we amend § 319.56–50 to relieve the restrictions associated with those fruit flies on the movement of Hass avocados from Peru.

In response to the request by the NPPO of Peru, we prepared a commodity import evaluation document (CIED), titled "Host status of "Hass" avocados to Mediterranean fruit fly *Ceratitis capitata* (Wiedemann) and the South American fruit fly, *Anastrepha fraterculus* (Wiedemann)," which evaluated the host status of Hass avocados for Mediterranean fruit fly and South American fruit fly. The conclusions of the CIED, which considers recent research and other references on this topic, are consistent with the study by the NPPO of Peru and ProHass, which demonstrated that Hass avocados are conditional non-hosts of Mediterranean fruit fly and South American fruit fly (*i.e.*, not hosts under field conditions). While infestation of Hass avocados within Peru by Mediterranean fruit fly and South American fruit fly were observed during laboratory infestation tests, all deposited eggs were encapsulated by callous tissues and died. The main risk is from avocado fruit that is outside of the normal population, *i.e.,* the wrong cultivar, fruit left to become overripe on the tree, injured or damaged fruit, fruit picked up from the ground, or picked fruit left in the field for days. Copies of the CIED may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT** or viewed on the Regulations.gov Web site (*see* **ADDRESSES** above for instructions for accessing Regulations.gov).

Based on the findings of the study CIED, we believe that the trapping requirements for Mediterranean fruit fly for Hass avocados imported from the State of Michoacan, Mexico, the treatment requirements and origin restrictions for Mediterranean fruit fly for imported Hass avocados from Peru, and the trapping requirements and origin restrictions for South American fruit fly for imported Hass avocados from Peru are no longer warranted. Therefore, we are proposing to amend § 319.56–30 by removing paragraph (c)(1)(iii), which contains trapping requirements for Mediterranean fruit flies in Michoacan, Mexico. We are also proposing to amend § 319.56–50 by removing paragraph (d), which requires that Hass avocados from Peru originate from places of production where trapping is conducted for South American fruit fly in Peru or from areas free of that pest; by removing paragraph (e), which requires that Hass avocados from Peru be treated for Mediterranean fruit fly or originate from an area in Peru free of that pest; and by removing paragraphs (j)(1) through (j)(3), which require that the phytosanitary certificate state that the Hass avocados in the consignment meet the requirements in paragraphs (d) and (e). In addition, we are proposing to amend paragraph (g) to remove the fruit cutting requirement for Hass avocados from Peru with respect to Mediterranean fruit fly and South American fruit fly and the requirement for treatment of Hass avocados from Peru for Mediterranean fruit fly. We would retain the fruit cutting requirement for avocado seed moth and the inspection for quarantine pests. We would continue to require that Hass avocados from Mexico and Peru undergo the post-harvest safeguarding and other requirements that currently apply for their importation into the United States and include requiring that fallen fruit be excluded from consignments, that harvested avocados be moved from the orchard to the packinghouse within 3 hours of harvest, and that avocados moving from the orchard to the packinghouse be protected from fruit fly infestations and be accompanied by a field record indicating the location of the avocados' originating orchard.

The findings of the CIED also support providing alternatives to treatment for domestic Hass avocado producers. Although there are currently no areas within the United States that are quarantined due to the presence of Mediterranean fruit fly, in order to make our domestic and foreign requirements for movement of Hass avocados consistent with each other, we are proposing to amend paragraph (d) in § 301.32–4 to provide for the interstate movement of Hass avocados from Mediterranean fruit fly domestic quarantined areas under certificate if the fruit is safeguarded after harvest in accordance with specific phytosanitary measures. Those measures would be the same as those that currently apply to Hass avocados moving interstate from Mexican fruit fly and sapote fruit fly domestic quarantined areas and include requiring that fallen fruit be excluded from consignments, that harvested avocados be moved from the orchard to the packinghouse within 3 hours of harvest, and that avocados moving from the orchard to the packinghouse be

[1] To view the proposed rule, the comments we received, and the final rule, go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2008-0126.*

[2] Plant Health Division Servicio Nacional de Sanidad Agraria (SENASA) Ministry of Agriculture & Technical Department Peruvian Hass Avocado Growers Association (ProHass), *Nonhost Status of Commercial Avocado (Persea americana)* "*Hass*" *with respect to Ceratitis capitata, Anastrepha fraterculus, and Anastrepha striata (Diptera: Tephritidae) in Peru.* (December 2010).

protected from fruit fly infestations and be accompanied by a field record indicating the location of the avocados' originating orchard. We do not have domestic quarantine regulations for South American fruit fly.

Executive Order 12866 and Regulatory Flexibility Act

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

In accordance with 5 U.S.C. 603, we have performed an initial regulatory flexibility analysis, which is summarized below, regarding the economic effects of this proposed rule on small entities. Copies of the full analysis are available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT** or on the Regulations.gov Web site (*see* **ADDRESSES** above for instructions for accessing Regulations.gov).

Entities potentially impacted by this rule include U.S. producers and importers of Hass avocados, most of which are considered small entities. The proposed rule may affect the quantity and/or price of Hass avocados imported from Mexico and Peru. In particular, Hass avocados imported from these countries may become more competitively priced, depending upon the costs of fruit fly quarantine measures relative to the other costs of producing and preparing the fruit for importation by the United States. APHIS does not have information on the extent to which the quantity or price of Hass avocado imports may be affected by the proposed rule. In addition, U.S. producers in areas quarantined for the Mediterranean fruit fly would benefit from the proposed rule by being able to move avocados out of the quarantined area under certificate. There are currently no areas in the United States quarantined because of Mediterranean fruit fly.

Based on the information we have, there is no reason to conclude that adoption of this proposed rule would result in any significant economic effect on a substantial number of small entities. However, we do not currently have all of the data necessary for a comprehensive analysis of the effects of this proposed rule on small entities. Therefore, we are inviting comments on potential effects. In particular, we are interested in determining the number and kind of small entities that may incur benefits or costs from the implementation of this proposed rule.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects

7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we propose to amend 7 CFR parts 301 and 319 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 issued under Sec. 204, Title II, Public Law 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 issued under Sec. 203, Title II, Public Law 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

§ 301.32–4 [Amended]

2. In § 301.32–4, paragraph (d) introductory text is amended by removing the word "Mexican" and adding the words "Mediterranean, Mexican," in its place.

PART 319—FOREIGN QUARANTINE NOTICES

3. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

§ 319.56–30 [Amended]

4. Section 319.56–30 is amended by removing paragraph (c)(1)(iii).

5. Section 319.56–50 is amended as follows:

a. By revising paragraphs (b)(1) and (b)(2) to read as set forth below.

b. By removing paragraphs (d) and (e) and redesignating paragraphs (f) through (j) as paragraphs (d) through (h), respectively.

c. By revising newly redesignated paragraph (g) to read as set forth below.

d. In newly redesignated paragraph (h) introductory text, by removing the words "In addition:" and by removing newly redesignated paragraphs (h)(1) through (h)(3).

§ 319.56–50 Hass avocados from Peru.

* * * * *

(b) * * * (1) The NPPO of Peru must visit and inspect registered places of production monthly, starting at least 2 months before harvest and continuing until the end of the shipping season, to verify that the growers are complying with the requirements of paragraphs (c) and (e) of this section and follow pest control guidelines, when necessary, to reduce quarantine pest populations. Any personnel conducting trapping and pest surveys under paragraph (d) of this section must be trained and supervised by the NPPO of Peru. APHIS may monitor the places of production if necessary.

(2) In addition to conducting fruit inspections at the packinghouses, the NPPO of Peru must monitor packinghouse operations to verify that the packinghouses are complying with the requirements of paragraph (f) of this section.

* * * * *

(g) *NPPO of Peru inspection.* Following any post-harvest processing, inspectors from the NPPO of Peru must inspect a biometric sample of fruit from each place of production at a rate to be determined by APHIS. The inspectors must visually inspect for the quarantine pests listed in the introductory text of this section and must cut fruit to inspect for *S. catenifer.* If any quarantine pests are detected in this inspection, the place of production where the infested avocados were grown will immediately be suspended from the export program until an investigation has been conducted by APHIS and the NPPO of Peru and appropriate mitigations have been implemented.

* * * * *

Done in Washington, DC, this 29th day of March 2011.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–7894 Filed 4–1–11; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1260

[No. AMS–LS–10–0086]

Beef Promotion and Research; Reapportionment

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would adjust representation on the Cattlemen's Beef Promotion and Research Board (Board), established under the Beef Promotion and Research Act of 1985 (Act), to reflect changes in cattle inventories and cattle and beef imports that have occurred since the most recent Board reapportionment rule became effective in October 2008. These adjustments are required by the Beef Promotion and Research Order (Order) and would result in a decrease in Board membership from 106 to 103, effective with the U.S. Department of Agriculture's (USDA) appointments for terms beginning early in the year 2012.

DATES: Written comments must be received by May 4, 2011.

ADDRESSES: Comments must be posted online at *http://www.regulations.gov* or sent to Craig Shackelford, Marketing Programs Branch, Livestock and Seed Program, Agricultural Marketing Service, USDA, Room 2628–S, STOP 0251, 1400 Independence Avenue, SW., Washington, DC 20250–0251; or fax to (202) 720–1125. All comments should reference the docket number, the date, and the page number of this issue of the **Federal Register**. Comments will be available for public inspection at the aforementioned address, as well as on the Internet at *http://www.regulations.gov/*.

FOR FURTHER INFORMATION CONTACT: Craig Shackelford, Marketing Programs Branch, on 202/720–1115, fax 202/720–1125, or by e-mail at *craig.shackelford@ams.usda.gov*.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Office of Management and Budget (OMB) has waived the review process required by Executive Order 12866 for this action.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect.

Section 11 of the Act provides that nothing in the Act may be construed to preempt or supersede any other program relating to beef promotion organized and operated under the laws of the United States or any State. There are no administrative proceedings that must be exhausted prior to any judicial challenge to the provisions of this rule.

Regulatory Flexibility Act and Paperwork Reduction Act

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic effect of this action on small entities and has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities. The purpose of RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly burdened.

In the February 2010 publication of "Farms, Land in Farms, and Livestock Operations," USDA's National Agricultural Statistics Service (NASS) estimates that in 2009 the number of operations in the United States with cattle totaled approximately 950,000. The majority of these operations that are subject to the Order may be classified as small entities.

The proposed rule imposes no new burden on the industry. It only adjusts representation on the Board to reflect changes in domestic cattle inventory and cattle and beef imports. The adjustments are required by the Order and would result in a decrease in Board membership from 106 to 103.

Background and Proposed Action

The Board was initially appointed August 4, 1986, pursuant to the provisions of the Act (7 U.S.C. 2901–2911) and the Order issued thereunder. Domestic representation on the Board is based on cattle inventory numbers, and importer representation is based on the conversion of the volume of imported cattle, beef, or beef products into live animal equivalencies.

Section 1260.141(b) of the Order provides that the Board shall be composed of cattle producers and importers appointed by the Department from nominations submitted by certified producer organizations. A producer may only be nominated to represent the unit in which that producer is a resident.

Section 1260.141(c) of the Order provides that at least every 3 years and not more than every 2 years, the Board shall review the geographic distribution of cattle inventories throughout the United States and the volume of imported cattle, beef, and beef products and, if warranted, shall reapportion units and/or modify the number of Board members from units in order to reflect the geographic distribution of cattle production volume in the United States and the volume of cattle, beef, or beef products imported into the United States.

Section 1260.141(d) of the Order authorizes the Board to recommend to the Department modifications to the number of cattle per unit necessary for representation on the Board.

Section 1260.141(e)(1) provides that each geographic unit or State that includes a total cattle inventory equal to or greater than 500,000 head of cattle shall be entitled to one representative on the Board. Section 1260.141(e)(2) provides that States that do not have total cattle inventories equal to or greater than 500,000 head shall be grouped, to the extent practicable, into geographically-contiguous units, each of which have a combined total inventory of not less than 500,000 head. Such grouped units are entitled to at least one representative on the Board. Each unit that has an additional 1 million head of cattle within a unit qualifies for additional representation on the Board as provided in § 1260.141(e)(4). As provided in § 1260.141(e)(3), importers are represented by a single unit, with the number of Board members based on a conversion of the total volume of imported cattle, beef, or beef products into live animal equivalencies.

The initial Board appointed in 1986 was composed of 113 members. Reapportionment, based on a 3-year average of cattle inventory numbers and import data, reduced the Board to 111 members in 1990 and 107 members in 1993 before the Board was increased to 111 members in 1996. The Board was decreased to 110 members in 1999, 108 members in 2001, 104 members in 2005, and increased to 106 members in 2009. This proposal would, when finalized, decrease the number of Board members from 106 to 103 with appointments for terms effective early in 2012.

The current Board representation by States or units was based on an average of the January 1, 2005, 2006, and 2007, inventory of cattle in the various States as reported by NASS. Current importer representation was based on a combined total average of the 2005, 2006, and 2007 live cattle imports as published by USDA's Foreign Agricultural Service and the average of the 2004, 2005, and 2006 live animal equivalents for imported beef products.

In considering reapportionment, the Board reviewed cattle inventories as well as cattle, beef, and beef product import data for the period of January 1,

2008, to January 1, 2010. The Board recommended that a 3-year average of cattle inventories and import numbers should be continued. The Board determined that an average of the January 1, 2008, 2009, and 2010, cattle inventory numbers would best reflect the number of cattle in each State or unit since publication of the last reapportionment rule published in 2008 (73 FR 60097).

The Board reviewed data published by the USDA's Economic Research Service to determine proper importer representation. The Board recommended the use of a combined total of the average of the 2008, 2009, and 2010, cattle import data and the average of the 2007, 2008, and 2009, live animal equivalents for imported beef products. The method used to calculate the total number of live animal equivalents was the same as that used in the previous reapportionment of the Board. The live animal equivalent weight was changed in 2006 from 509 pounds to 592 pounds.

The Board's recommended reapportionment plan would decrease the number of representatives on the Board from 106 to 103. From the Board's analysis of USDA cattle inventories and import equivalencies, Kansas, Nebraska, Nevada, and the Southeast Region would each lose one Board seat. Montana would gain a Board seat. The importers would lose two Board seats. The Board has recommended that the Southeast Region be expanded to include Alabama, permitting the new unit three Board members. According to the Board analysis, Nevada would lose its representation on the Board. However, the Board also proposed that California and Nevada be combined to form a Southwest unit.

The States and units affected by the reapportionment plan and the current and proposed member representation per unit are as follows:

State/unit	Current representation	Revised representation
Kansas	7	6.
Nebraska	7	6.
Nevada	1	0.
Southeast	3	3 (lost one seat but added a seat with Alabama joining the unit).
Importers	9	7.
Montana	2	3.
Southwest Unit	N/A	6 (California and Nevada).

The 2012 nomination and appointment process was not in progress while the Board was developing its recommendations. Thus, the Board reapportionment as proposed by this rulemaking would be effective, if adopted, with appointments that will be effective early in the year 2012.

A 30-day comment period is provided to allow interested persons to respond to this proposal. Thirty days is deemed appropriate to facilitate the adjustment of the representation on the Board, which is required by the Order at least every 3 years, and not more than every 2 years. To permit timely execution of the annual nomination and appointment process, publication of a subsequent final rule must occur as soon as practical.

It is found that good cause exists to provide a 30 day comment period after the date of publication in the **Federal Register** because the Beef Promotion and Research Program would benefit by having this rule in effect as soon as possible for the Board appointments that will be effective early in the year 2012.

List of Subjects in 7 CFR Part 1260

Administrative practice and procedure, Advertising, Agricultural research, Imports, Marketing agreement, Meat and meat products, Reporting and recordkeeping requirements.

For reasons set forth in the preamble, it is proposed that 7 CFR part 1260 be amended as follows:

PART 1260—BEEF PROMOTION AND RESEARCH

1. The authority citation for 7 CFR part 1260 continues to read as follows:

Authority: 7 U.S.C. 2901–2911 and 7 U.S.C. 7401.

2. In § 1260.141, paragraph (a) and the table immediately following it, are revised to read as follows:

§ 1260.141 Membership of Board.

(a) Beginning with the 2011 Board nominations and the associated appointments effective early in the year 2012, the United States shall be divided into 37 geographical units and, 1 unit representing importers, for a total of 38 units. The number of Board members from each unit shall be as follows:

CATTLE AND CALVES [1]

State/unit	(1,000 Head)	Directors
1. Arizona	983	1
2. Arkansas	1,837	2
3. Colorado	2,650	3
4. Florida	1,710	2
5. Idaho	2,153	2
6. Illinois	1,200	1
7. Indiana	873	1
8. Iowa	3,933	4
9. Kansas	6,317	6
10. Kentucky	2,333	2
11. Louisiana	873	1

CATTLE AND CALVES [1]—Continued

State/unit	(1,000 Head)	Directors
12. Michigan	1,080	1
13. Minnesota	2,407	2
14. Mississippi	957	1
15. Missouri	4,217	4
16. Montana	2,583	3
17. Nebraska	6,350	6
18. New Mexico	1,540	2
19. New York	1,410	1
20. North Carolina	833	1
21. North Dakota	1,763	2
22. Ohio	1,270	1
23. Oklahoma	5,417	5
24. Oregon	1,290	1
25. Pennsylvania	1,607	2
26. South Dakota	3,733	4
27. Tennessee	2,040	2
28. Texas	13,500	14
29. Utah	820	1
30. Virginia	1,530	2
31. Wisconsin	3,367	3
32. Wyoming	1,327	1
33. Northwest	.....	1
Alaska	15	.....
Hawaii	151	.....
Washington	1,070	.....
Total	1,236	.....
34. Northeast	.....	1
Connecticut	50	.....
Delaware	21	.....
Maine	88	.....
Massachusetts	44	.....
New Hampshire	38	.....
New Jersey	37	.....
Rhode Island	5	.....
Vermont	267	.....
Total	550	.....
35. Mid-Atlantic	.....	1
Maryland	192	.....
West Virginia	400	.....
Total	592	.....
36. Southeast	.....	3
Alabama	1,253	.....
Georgia	1,100	.....
South Carolina	385	.....
Total	2,738	.....
37. Southwest	.....	6
California	5,283	.....
Nevada	450	.....
Total	5,733	.....
38. Importer [2]	6,887	7

[1] 2008, 2009, and 2010 average of January 1 cattle inventory data.
[2] 2007, 2008, and 2009 average of annual import data.

* * * * *

Dated: March 29, 2011.

David R. Shipman,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2011–7826 Filed 4–1–11; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket No. EERE–2011–BT–NOA–0013]

Energy Conservation Program: Data Collection and Comparison With Forecasted Unit Sales of Five Lamp Types

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

ACTION: Notice of data availability.

SUMMARY: The U.S. Department of Energy (DOE) is informing the public of its collection of shipment data and creation of spreadsheet models to provide comparisons between actual and benchmark estimate unit sales of five lamp types (*i.e.,* rough service lamps, vibration service lamps, 3-way incandescent lamps, 2,601–3,300 lumen general service incandescent lamps, and shatter-resistant lamps), which are currently exempt from energy conservation standards. As the actual sales do not exceed the forecasted estimate by 100 percent for any lamp type (*i.e.,* the threshold triggering rulemaking for an energy conservation standard for that lamp type has not been exceeded), DOE has determined that no regulatory action is necessary at this time. However, DOE will continue to track sales data for these exempted lamps. Relating to this activity, DOE has prepared and is making available on its Web site a spreadsheet showing the comparisons of anticipated versus actual sales, as well as the model used to generate the original sales estimates. The spreadsheet is available at: *http://www1.eere.energy.gov/buildings/appliance_standards/residential/five_lamp_types.html.*

FOR FURTHER INFORMATION CONTACT: Ms. Tina Kaarsberg, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 287–1393. E-mail: *Tina.Kaarsberg@ee.doe.gov.*

Mr. Eric Stas, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–9507. E-mail: *Eric.Stas@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

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I. Background

The Energy Independence and Security Act of 2007 (EISA 2007) (Pub. L. 110–140) was enacted on December 19, 2007. Among the requirements of subtitle B (Lighting Energy Efficiency) of title III of EISA 2007 were provisions directing the U.S. Department of Energy (DOE) to collect, analyze, and monitor unit sales of five lamp types (*i.e.,* rough service lamps, vibration service lamps, 3-way incandescent lamps, 2,601–3,300 lumen general service incandescent lamps, and shatter-resistant lamps). In relevant part, section 321(a)(3)(B) of EISA 2007 amended section 325(l) of the Energy Policy and Conservation Act of 1975 (EPCA) by adding paragraph (4)(B) which generally directs DOE, in consultation with the National Electrical Manufacturers Association (NEMA), to: (1) Collect unit sales data for each of the five lamp types for calendar years 1990 through 2006 in order to determine the historical growth rate for each lamp type; and (2) construct a model for each of the five lamp types based on coincident economic indicators that closely match the historical annual growth rates of each lamp type to provide a neutral comparison benchmark estimate of future unit sales. (42 U.S.C. 6295(l)(4)(B)) Section 321(a)(3)(B) of EISA 2007 also amends section 325(l) of EPCA by adding paragraph (4)(C), which in relevant part, directs DOE to collect unit sales data for calendar years 2010 through 2025, in consultation with NEMA, for each of the five lamp types. DOE must then compare the actual lamp sales in that year with the benchmark estimate, determine if the unit sales projection has been exceeded, and issue the findings within 90 days after the end of the analyzed calendar year. (42 U.S.C. 6295(l)(4)(C))

On December 18, 2008, DOE issued a notice of data availability for the *Report on Data Collection and Estimated Future Unit Sales of Five Lamp Types* (hereafter "the 2008 analysis") [1] which was published in the **Federal Register** on December 24, 2008. 73 FR 79072. The 2008 analysis presented the 1990 through 2006 shipment data collected in consultation with NEMA, the spreadsheet model DOE constructed for each lamp type, and the benchmark unit sales estimate for 2010 through 2025. Today's NODA presents the first of the mandated follow-up comparisons. Section IV of this report compares the actual unit sales against benchmark unit sales estimates for 2010.

EISA 2007 also amends section 325(l) of EPCA by adding paragraphs (4)(D) through (4)(H) which state that if DOE finds that the unit sales for a given lamp type in any year between 2010 and 2025 exceed the benchmark estimate of unit sales by at least 100 percent (*i.e.,* more than double the anticipated sales), then DOE must take regulatory action to establish an energy conservation standard for such lamps. (42 U.S.C. 6295(l)(4)(D)–(H)) For 2,601–3,300 lumen general service incandescent lamps, DOE must adopt a statutorily-prescribed energy conservation standard, and for the other four types of lamps, the statute requires DOE to initiate an accelerated rulemaking to establish energy conservation standards. If the Secretary does not complete the accelerated rulemakings within one year of the end of the previous calendar year, there is a "backstop requirement" for each lamp type, which would establish energy conservation standard levels and related requirements by statute. *Id.*

As in the 2008 analysis, in this NODA, DOE uses manufacturer shipments as a surrogate for unit sales, because manufacturer shipment data is tracked and aggregated by the trade organization, NEMA. DOE believes that annual shipments track closely with actual unit sales of these five lamp types, as DOE presumes that retailer inventories remain constant from year to year. DOE believes this is a reasonable assumption because the markets for these five lamp types have existed for many years, thereby enabling manufacturers and retailers to establish appropriate inventory levels that reflect market demand. Furthermore, in the long-run, unit sales could not increase

[1] The Report on the 2008 analysis is available on the DOE Web site at: *http://www1.eere.energy.gov/buildings/appliance_standards/residential/pdfs/five_lamp_types_report.pdf.*

in any one year without manufacturer shipments increasing either that year or the following one. In either case, increasing unit sales must eventually result in increasing manufacturer shipments. This is the same methodology presented in DOE's 2008 analysis, and the Department did not receive any comments challenging this assumption or the general approach.

II. Definitions

A. Rough Service Lamps

Section 321(a)(1)(B) of EISA 2007 amended section 321(30) of EPCA by adding the definition of a "rough service lamp." The statutory definition reads as follows: "The term 'rough service lamp' means a lamp that—(i) has a minimum of 5 supports with filament configurations that are C–7A, C–11, C–17, and C–22 as listed in Figure 6–12 of the 9th edition of the IESNA [Illuminating Engineering Society of North America] Lighting handbook, or similar configurations where lead wires are not counted as supports; and (ii) is designated and marketed specifically for 'rough service' applications, with—(I) the designation appearing on the lamp packaging; and (II) marketing materials that identify the lamp as being for rough service." (42 U.S.C. 6291(30)(X))

As noted above, rough service incandescent lamps must have a minimum of five filament support wires (not counting the two connecting leads at the beginning and end of the filament), and must be designated and marketed for "rough service" applications. This type of incandescent lamp is typically used in applications where the lamp would be subject to mechanical shock or vibration while it is operating. Standard incandescent lamps have only two support wires (which also serve as conductors), one at each end of the filament coil. When operating (*i.e.,* when the tungsten filament is glowing so hot that it emits light), a standard incandescent lamp's filament is brittle, and rough service applications could cause it to break prematurely. To address this problem, lamp manufacturers developed lamp designs that incorporate additional support wires along the length of the filament to ensure that it has support not just at each end, but at several other points as well. The additional support protects the filament during operation and enables longer operating life for incandescent lamps in rough service applications. Typical applications for these rough service lamps might include commercial hallways and stairwells, gyms, storage areas, and security areas.

B. Vibration Service Lamps

Section 321(a)(1)(B) of EISA 2007 amended section 321(30) of EPCA by adding the definition of a "vibration service lamp." The statutory definition reads as follows: "The term 'vibration service lamp' means a lamp that—(i) has filament configurations that are C–5, C–7A, or C–9, as listed in Figure 6–12 of the 9th Edition of the IESNA Lighting Handbook or similar configurations; (ii) has a maximum wattage of 60 watts; (iii) is sold at retail in packages of 2 lamps or less; and (iv) is designated and marketed specifically for vibration service or vibration-resistant applications, with—(I) the designation appearing on the lamp packaging; and (II) marketing materials that identify the lamp as being vibration service only." (42 U.S.C. 6291(30)(AA))

The statute mentions three examples of filament configurations for vibration service lamps in Figure 6–12 of the *IESNA Lighting Handbook,* one of which (*i.e.,* C–7A) is also listed in the statutory definition of "rough service lamp." The definition of "vibration service lamp" requires that such lamps have a maximum wattage of 60 watts and be sold at a retail level in packages of two lamps or less. Similar to rough service lamps, vibration service lamps must be designated and marketed for vibration service or vibration-resistant applications. As the name suggests, this type of incandescent lamp is generally used in applications where the incandescent lamp would be subject to a continuous low level of vibration, such as in a ceiling fan light kit. In such applications, standard incandescent lamps without additional filament support wires may not achieve the full rated life, because the filament wire is brittle and would be subject to breakage at typical operating temperature. To address this problem, lamp manufacturers typically use a more malleable tungsten filament to avoid damage and short circuits between coils.

C. Three-Way Incandescent Lamps

Section 321(a)(1)(B) of EISA 2007 amended section 321(30) of EPCA by adding the definition of a "3-way incandescent lamp." The statutory definition reads as follows: "The term '3-way incandescent lamp' includes an incandescent lamp that—(i) employs 2 filaments, operated separately and in combination, to provide 3 light levels; and (ii) is designated on the lamp packaging and marketing materials as being a 3-way incandescent lamp." (42 U.S.C. 6291(30)(Y))

Three-way lamps are commonly found in wattage combinations such as 50, 100, and 150 watts or 30, 70, and 100 watts. These lamps use two filaments (*e.g.,* a 30-watt and a 70-watt filament) and can be operated separately or together to produce three different lumen outputs (*e.g.,* 305 lumens with one filament, 995 lumens with the other, or 1,300 lumens using the filaments together). When used in 3-way sockets, these lamps allow users to control the light level. Three-way incandescent lamps are typically used in residential multi-purpose areas, where consumers may adjust the light level to be appropriate for the task they are performing.

D. 2,601–3,300 Lumen General Service Incandescent Lamps

The statute does not provide a definition of "2,601–3,300 Lumen General Service Incandescent Lamps"; however, DOE is interpreting this term to be a general service incandescent lamp [2] that emits between 2,601 and 3,300 lumens. In this lumen range, the wattages of covered general service incandescent lamps are between 140 and 170 watts. Within that range, the only commonly made lamp that meets other general service incandescent lamp criteria is rated at 150 watts. Should other rated wattages enter the market that fall within this lumen range, they will be immediately recognizable because as required by the Energy Policy Act of 1992, Public Law 102–486, all general service incandescent lamps must be labeled with lamp lumen output.[3] These lamps are used in general service applications when high light output is needed.

E. Shatter-Resistant Lamps

Section 321(a)(1)(B) of EISA 2007 amended section 321(30) of EPCA by adding the definition of a "shatter-resistant lamp, shatter-proof lamp, or shatter-protected lamp." The statutory definition reads as follows: "The terms 'shatter-resistant lamp,' 'shatter-proof lamp,' and 'shatter-protected lamp' mean a lamp that—(i) has a coating or equivalent technology that is compliant with [National Sanitation Foundation/

[2] "General service incandescent lamp" is defined as a standard incandescent or halogen type lamp that—(I) is intended for general service applications; (II) has a medium screw base; (III) has a lumen range of not less than 310 lumens and not more than 2,600 lumens; and (IV) is capable of being operated at a voltage range at least partially within 110 and 130 volts. (42 U.S.C. 6291(30)(D))

[3] The Federal Trade Commission issued the lamp labeling requirements in 1994 (*see* 59 FR 25176 (May 13, 1994)). Further amendments were made to the lamp labeling requirements in 2007 (*see* 16 CFR 305.15(b); 72 FR 49948, 49971–72 (August 29, 2007)). The package must display the lamp's light output (in lumens), energy use (in watts), and lamp life (in hours).

American National Standards Institute] NSF/ANSI 51 and is designed to contain the glass if the glass envelope of the lamp is broken; and (ii) is designated and marketed for the intended application, with—(I) the designation on the lamp packaging; and (II) marketing materials that identify the lamp as being shatter-resistant, shatter-proof, or shatter-protected." (42 U.S.C. 6291(30)(Z)) Although the definition provides three names commonly used to refer to these lamps, DOE simply refers to them collectively as "shatter-resistant lamps."

Shatter-resistant lamps incorporate a special coating designed to prevent glass shards from being strewn if a lamp's glass envelope breaks. Shatter-resistant lamps incorporate a coating compliant with industry standard NSF/ANSI 51,[4] "Food Equipment Materials," and are labeled and marketed as shatter-resistant, shatter-proof, or shatter-protected. The coatings protect the lamp from breakage in applications subject to heat and thermal shock that may occur from water, sleet, snow, soldering, or welding.

III. Comparison Methodology

In the 2008 analysis, DOE reviewed each of the five sets of shipment data that were collected in consultation with NEMA and applied two curve fits to generate unit sales estimates for the five lamp types after calendar year 2006. One curve fit applied a linear regression to the historical data and extends that line into the future. The other curve fit applied an exponential growth function to the shipment data and projects unit sales into the future. For this calculation, linear regression treats the year as a dependent variable and shipments as the independent variable. The linear regression curve fit is modeled by minimizing the differences among the data points and the best curve-fit linear line using the least squares function.[5] The exponential curve fit is also a regression function and uses the same least squares function to find the best fit. For some data sets, an exponential curve provides a better characterization of the historical data, and, therefore, a better projection of the future data.

For 3-way incandescent lamps, 2,601–3,300 lumen general service incandescent lamps, and shatter-resistant lamps, DOE found that the linear regression and exponential growth curve fits produced nearly the same estimates of unit sales (*i.e.,* the difference between the two forecasted values was less than 1 or 2 percent). However, for rough service and vibration service lamps, the linear regression curve fit projects lamp unit sales would decline to zero for both lamp types by 2018. In contrast, the exponential growth curve fit projected a more gradual decline in unit sales, such that lamps will still be sold beyond 2018, and it was, therefore, considered the more realistic forecast. While DOE would be satisfied that either the linear regression or exponential growth spreadsheet model would generate a reasonable benchmark unit sales estimate for 3-way incandescent lamps, 2,601–3,300 lumen general service incandescent lamps, and shatter-resistant lamps, DOE is selecting the exponential growth curve fit for these lamp types for consistency with the selection made for rough service and vibration service lamps.[6] DOE examines the benchmark unit sales estimates and actual sales for each of the five lamp types in the following section and also makes the comparisons available in a spreadsheet online at: *http://www1.eere.energy.gov/buildings/appliance_standards/residential/five_lamp_types.html.*

IV. Comparison Results

A. Rough Service Lamps

For rough service lamps, the exponential growth forecast projected the benchmark unit sales estimate for 2010 to be 6,395,000 units. The NEMA-provided shipment data reported shipments of 7,971,000 rough service lamps in 2010. As this finding exceeds the estimate by only 24.6 percent, DOE will continue to track rough service lamp sales data and will not initiate regulatory action for this lamp type at this time.

B. Vibration Service Lamps

For vibration service lamps, the exponential growth forecast projected the benchmark unit sales estimate for 2010 to be 3,341,000 units. The NEMA-provided shipment data reported shipments of 674,000 vibration service lamps in 2010. As this finding is only 20.2 percent of the estimate, DOE will continue to track vibration service lamp sales data and will not initiate regulatory action for this lamp type at this time.

C. Three-Way Incandescent Lamps

For 3-way incandescent lamps, the exponential growth forecast projected the benchmark unit sales estimate for 2010 to be 51,177,000 units. The NEMA-provided shipment data reported shipments of 29,140,000 3-way incandescent lamps in 2010. As this finding is only 56.9 percent of the estimate, DOE will continue to track 3-way incandescent lamp sales data and will not initiate regulatory action for this lamp type at this time.

D. 2,601–3,300 Lumen General Service Incandescent Lamps

For 2,601–3,300 lumen general service incandescent lamps, the exponential growth forecast projected the benchmark unit sales estimate for 2010 to be 33,848,000 units. The NEMA-provided shipment data reported shipments of 7,140,000 2,601–3,300 lumen general service incandescent lamps in 2010. As this finding is 21.1 percent of the estimate, DOE will continue to track 2,601–3,300 lumen general service incandescent lamp sales data and will not initiate regulatory action for this lamp type at this time.

E. Shatter-Resistant Lamps

For shatter-resistant lamps, the exponential growth forecast projected the benchmark unit sales estimate for 2010 to be 1,655,000 units. The NEMA-provided shipment data reported shipments of 848,000 shatter-resistant lamps in 2010. As this finding is only 51.2 percent of the estimate, DOE will continue to track shatter-resistant lamp sales data and will not initiate regulatory action for this lamp type at this time.

V. Conclusion

None of the shipments for the rough service lamps, vibration service lamps, 3-way incandescent lamps, 2,601–3,300 lumen general service incandescent lamps, or shatter-resistant lamps crossed the statutory threshold for a standard. DOE will monitor the situation for these five currently exempted lamp types and will reassess 2011 sales by March 31, 2012, in order to determine whether energy conservation standards rulemaking is required, consistent with 42 U.S.C. 6295(l)(4)(D)–(H).

[4] NSF/ANSI 51 applies specifically to materials and coatings used in the manufacturing of equipment and objects destined for contact with foodstuffs.

[5] The least squares function is an analytical tool that DOE uses to minimize the sum of the squared residual differences between the actual historical data points and the modeled value (*i.e.,* the linear curve fit). In minimizing this value, the resulting curve fit will represent the best fit possible to the data provided.

[6] *See* DOE's 2008 forecast spreadsheet models of the lamp types for greater detail. The spreadsheet models are available at: *http://www1.eere.energy.gov/buildings/appliance_standards/residential/docs/five_lamp_types_models.xls.*

Issued in Washington, DC, on March 30, 2011.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Office of Technology Development, Energy Efficiency and Renewable Energy.

[FR Doc. 2011–7939 Filed 4–1–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

10 CFR Part 431

[Docket No. EERE–2010–BT–TP–0036]

RIN 1904–AC38

Energy Efficiency Program for Certain Commercial and Industrial Equipment: Test Procedures for Automatic Commercial Ice Makers

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

ACTION: Notice of proposed rulemaking.

SUMMARY: The U.S. Department of Energy (DOE) proposes to revise its test procedure for automatic commercial ice makers (ACIM) established under the Energy Policy and Conservation Act. This notice of proposed rulemaking (NOPR) proposes to update the incorporation by reference of industry test procedures to the most current published versions. The current DOE test procedure applies to automatic commercial ice makers that produce cube type ice. This NOPR proposes to expand coverage of the test procedure to all batch type and continuous type ice makers with capacities between 50 and 4,000 pounds of ice per 24 hours. A batch type ice maker is defined as an ice maker with alternate freezing and harvesting periods, including machines that produce cube type ice, tube type ice, and fragmented ice. A continuous type ice maker is defined as an ice maker that continually freezes and harvests ice at the same time. Continuous type ice makers primarily produce flake or nugget ice. DOE also proposes amendments to standardize test results based on ice quality for continuous type ice makers, clarify the test methods and reporting requirements for automatic ice makers designed to be connected to a remote compressor rack, and provide test methods for modulating capacity ice makers. Furthermore, DOE proposes to discontinue the use of a clarified energy use equation.

The test procedure applies to automatic commercial ice makers as defined in section 136 of the Energy Policy Act of 2005. Use of any amended test procedures will be required on the compliance date of any standards developed in the associated energy conservation standard rulemaking. This notice announces a public meeting to discuss and receive comments on the proposed test procedure amendments.

DATES: DOE will hold a public meeting in Washington, DC on April 29, 2011 from 9 a.m. to 1 p.m. Additionally, DOE plans to make the public meeting available via webinar. See section V, "Public Participation," of this NOPR for webinar registration information, participant instructions, and information about the capabilities available to webinar participants.

DOE will accept comments, data, and other information regarding this NOPR before or after the public meeting, but no later than June 3, 2011. See section V, "Public Participation," for details.

ADDRESSES: The public meeting will be held at the U.S. Department of Energy, Forrestal Building, Room 8E–089, 1000 Independence Avenue, SW., Washington, DC 20585–0121. To attend, please notify Ms. Brenda Edwards at (202) 586–2945. Please note that foreign nationals planning to participate in the public meeting are subject to advance security screening procedures. Any foreign national wishing to participate in the meeting should advise DOE as soon as possible by contacting Ms. Brenda Edwards at (202) 586–2945 to initiate the necessary procedures.

Any comments submitted must identify the NOPR for test procedures for automatic commercial ice makers, and provide docket number EERE–2010–BT–TP–0036 or Regulation Identifier Number (RIN) 1904–AC38. Comments may be submitted using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: ACIM-2010-TP-0036@ee.doe.gov.* Include the docket number EERE–2010–BT–TP–0036 and/or RIN 1904–AC38 in the subject line of the message.
- *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. If possible, please submit all items on CD. It is not necessary to include printed copies.
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza, SW., Suite 600, Washington, DC 20024. Telephone: (202) 586–2945. If possible, please submit all items on CD. It is not necessary to include printed copies.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to Office of Energy Efficiency and Renewable Energy through the methods listed above and by e-mail to *Christine_J._Kymn@omb.eop.gov.*

Docket: The docket is available for review at regulations.gov, including **Federal Register** notices, framework documents, public meeting attendee lists and transcripts, comments, and other supporting documents/materials. All documents in the docket are listed in the regulations.gov index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure. The regulations.gov web page will contain instructions on how to access all documents in the docket, including public comments.

The rulemaking web page can be found at: *http://www.eere.energy.gov/buildings/appliance_standards/commercial/automatic_ice_making_equipment.html.* This web page contains a link to the docket for this notice on regulations.gov.

For detailed instructions on submitting comments and additional information on the rulemaking process, see section V, "Public Participation," of this document.

For further information on how to submit or review public comments, participate in the public meeting, or view hard copies of the docket in the Resource Room, contact Ms. Brenda Edwards at (202) 586–2945 or e-mail: *Brenda.Edwards@ee.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Charles Llenza, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–2192, *Charles_Llenza@ee.doe.gov.*

In the Office of General Counsel contact Mr. Ari Altman, U.S. Department of Energy, Office of General Counsel, GC–71, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 287–6307, *Ari.Altman@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Legal Authority

Title III of the Energy Policy and Conservation Act ("EPCA" or "the Act," Pub. L. 94–163), as amended by the Energy Policy Act of 2005 (EPACT 2005, Pub. L. 109–58), establishes an energy conservation program for certain commercial and industrial equipment. (42 U.S.C. 6311–6317) This program sets Federal energy conservation standards, test procedures, and labeling requirements.

EPCA prescribes energy conservation standards for automatic commercial ice makers that produce cube type ice with capacities between 50 and 2,500 pounds of ice per 24-hour period. (42 U.S.C. 6313(d)(1)) EPCA also requires the Secretary of Energy to review these standards and determine, by January 1, 2015, whether amending the applicable standards is technically feasible and economically justified. (42 U.S.C. 6313(d)(3)) DOE is currently undertaking a standards rulemaking, concurrent to this test procedure rulemaking, to determine if amended standards are technically feasible and economically justified for automatic commercial ice makers covered by the standards set in EPACT 2005 (docket number EERE–2010–BT–STD–0037). In the energy conservation standards rulemaking, DOE is also proposing, under 42 U.S.C. 6313(d)(2), standards for continuous type ice makers, tube type ice makers, and equipment with capacities up to 4,000 pounds of ice per 24 hours.

Manufacturers of automatic commercial ice makers must use prescribed test procedures to measure energy and, if applicable, water use to certify to DOE that equipment complies with the energy conservation standards. (42 U.S.C. 6291(6)(A)) Manufacturers must also use prescribed test procedures for labeling or making representations about the efficiency of those products. (42 U.S.C. 6315(b)) Under 42 U.S.C. 6314, EPCA sets forth the criteria and procedures DOE must follow when prescribing or amending test procedures for covered products. EPCA provides in relevant part that "test procedures prescribed in accordance with this section shall be reasonably designed to produce test results which reflect energy efficiency, energy use, and estimated operating costs of a type of industrial equipment (or class thereof) during a representative average use cycle (as determined by the Secretary), and shall not be unduly burdensome to conduct." (42 U.S.C. 6314(2))

EPCA, as amended by EPACT 2005, prescribes that the test procedure for automatic commercial ice makers shall be the Air-Conditioning and Refrigeration Institute (ARI) Standard 810–2003, "Performance Rating of Automatic Commercial Ice-Makers." (42 U.S.C. 6314(a)(7)(A)) Pursuant to that section, on December 8, 2006, DOE published a final rule (the 2006 test procedure final rule) that adopted the test procedure specified in ARI Standard 810–2003, with a revised method for calculating energy use. DOE adopted a clarified energy use rate equation to specify that the energy use be calculated using the entire mass of ice produced during the testing period, normalized to 100 pounds of ice produced. 71 FR 71340, 71350 (Dec. 8, 2006). ARI Standard 810–2003 references the American National Standards Institute (ANSI)/American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) Standard 29–1988 (Reaffirmed 2005) (ASHRAE Standard 29–1988 (RA 2005)), "Method of Testing Automatic Ice Makers," as the method of test. The current test procedures for automatic commercial ice makers appear at 10 CFR part 431, subpart H, section 134, "Uniform test method for the measurement of energy consumption and water consumption of automatic commercial ice makers."

Since the publication of the 2006 test procedure final rule, ARI merged with the Gas Appliance Manufacturers Association (GAMA) to form the Air-Conditioning, Heating, and Refrigeration Institute (AHRI) and updated its test procedure to reflect changes in the industry. The new test procedure, AHRI Standard 810–2007, amends the previous test procedure, ARI Standard 810–2003, to:

1. Expand the capacity range of covered equipment to between 50 and 4,000 pounds of ice per 24 hours at standard rating conditions

2. Provide definitions and specific test procedures for batch type and continuous type ice makers; and

3. Provide a definition for ice hardness factor, which is a measure of ice quality or the percentage of liquid water content in the ice product of continuous type ice machines.

The revised AHRI Standard 810–2007 and ASHRAE Standard 29–2009 adopt new definitions for a "batch type ice maker" (also referred to as a cube type ice maker) and a "continuous type ice maker." A batch type ice maker is defined as an ice maker that has alternate freezing and harvesting periods, including machines that produce cube type ice, tube type ice, and fragmented ice. The test procedures further clarify that in this definition the word "cube" does not refer to the specific shape or size of ice produced. A continuous type ice maker is defined as an ice maker that continually freezes and harvests ice at the same time. Continuous type ice makers primarily produce flake and nugget ice.

EPCA, as amended, provides that if ARI Standard 810–2003 is revised, the Secretary shall amend the DOE test procedure as necessary to be consistent with the amended ARI Standard unless the Secretary determines, by rule, that to do so would not meet the requirements for test procedures set forth in EPCA. (42 U.S.C. 6314(a)(7)(B)) Because ARI

Standard 810 has been updated from the 2003 version, DOE must amend the DOE test procedure to reflect these updates, unless doing so would not meet the definition of a test procedure, as set forth in section 343(a)(7) of EPCA. (42 U.S.C. 6314(a)(7)(B)(i))

The commercial test procedure being considered in this rulemaking, AHRI Standard 810–2007, references the previous ASHRAE Standard 29–1988 (RA 2005). However, in 2009, ASHRAE also updated their test procedure to include provisions for measuring the performance of batch type and continuous type ice makers. The DOE test procedure also references the ASHRAE Standard 29–1988 (RA 2005).

DOE has preliminarily determined that the updated versions are consistent with the test procedure currently used in industry, expand coverage to additional products that are being proposed in the ongoing standard rulemaking, including continuous type and larger capacity ice makers with capacities up to 4,000 pounds of ice per day, and would meet the above-referenced requirements for a test procedure set forth in EPCA. (42 U.S.C. 6314(a)(7)(B)) As such, DOE proposes to incorporate by reference AHRI Standard 810–2007 as the DOE test procedure, with ASHRAE Standard 29–2009 as the referenced method of test.

DOE is revising the automatic commercial ice maker test procedure in part to correspond with changes being proposed in the concurrent standard rulemaking process on automatic commercial ice makers (docket number EERE–2010–BT–STD–0037). The energy conservation standards rulemaking that DOE is proposing under 42 U.S.C. 6313(d)(2) would establish energy conservation standards for continuous type ice makers and equipment with capacities up to 4,000 pounds of ice per 24 hours.

In addition to updating the references to AHRI 810–2007 and ASHRAE Standard 29–2009, DOE is proposing revisions to the DOE test procedure that:

1. Expand the scope of the test procedure to include equipment with capacities from 50 to 4,000 pounds of ice per 24 hours;

2. Provide test methods for continuous type ice makers;

3. Standardize the measurement of energy and water use for continuous type ice makers with respect to ice quality;

4. Clarify the test method and reporting requirements for remote condensing automatic commercial ice makers designed for connection to compressor racks;

5. Specify an optional test method for modulating capacity ice makers; and

6. Discontinue the use of a clarified energy use rate calculation and instead calculate energy use per 100 pounds of ice as specified in ASHRAE Standard 29–2009.

DOE believes that these amendments will result in a test procedure that more accurately reflects the energy and water use of automatic commercial ice makers and more fully complies with the requirements of EPCA. This test procedure rulemaking also fulfills DOE's obligation under EPCA to review the test procedure for automatic commercial ice makers every 7 years. (42 U.S.C. 6314(a)(1)(A))

EPCA requires that if DOE determines that a test procedure amendment is warranted, it must publish proposed test procedures and offer the public an opportunity to present oral and written comments on them. (42 U.S.C. 6314(b))

II. Summary of the Proposed Rule

A. Proposed Test Procedure Amendments

This NOPR proposes to update the test procedure references to the current industry-accepted test procedures, expand the scope to cover all continuous and batch type equipment with capacities from 50 to 4,000 pounds of ice per 24 hours, provide a test method to normalize energy with respect to ice quality for continuous type ice makers, clarify the test method and reporting requirements for remote condensing ice makers that are designed to be used with a remote compressor rack, provide an optional test method for modulating capacity ice makers, and discontinue the use of a clarified energy use rate calculation. In the absence of the clarified energy rate equation published by DOE as part of the previous DOE test procedure (71 FR 71340, 71350 (Dec. 8, 2006)), DOE will use the method prescribed in ASHRAE Standard 29–2009 to calculate energy use per 100 pounds of ice produced. This method is discussed in more detail in section III.A.7 of this document. DOE anticipates publishing the final rule amending the ACIM test procedures prior to issuing the NOPR for the ACIM energy conservation standard.

B. Association With Energy Conservation Standards Rulemaking

DOE is proposing these revisions to the DOE test procedure be consistent with the scope of coverage of the concurrent energy conservation standard rulemaking for automatic commercial ice makers (docket number EERE–2010–BT–STD–0037). If the scope of coverage changes in later stages of the automatic commercial ice maker energy conservation standards rulemaking, DOE may add provisions, as necessary, to the test procedure so that it is consistent with the final scope of coverage of any new or amended standards for automatic commercial ice makers.

EPCA, as amended, requires that any amended test procedures for automatic commercial ice makers shall comply with section 6293(e) of the same title (42 U.S.C. 6314(a)(7)(C)), which in turn prescribes that if any rulemaking amends a test procedure, DOE must determine "to what extent, if any, the proposed test procedure would alter the measured energy efficiency * * * of any covered product as determined under the existing test procedure." (42 U.S.C. 6293(e)(1)) Further, if DOE determines that the amended test procedure would alter the measured efficiency of a covered product, DOE must amend the applicable energy conservation standard accordingly. (42 U.S.C. 6293(e)(2))

In accordance with 42 U.S.C. 6293(e), DOE has analyzed the amended test procedure, as proposed in today's NOPR, to determine if it will affect the measured energy efficiency of a covered product. When the revised ACIM test procedure final rule is promulgated, the energy conservation standards set in EPACT 2005 for automatic commercial ice makers that produce cube type ice of capacities between 50 and 2,500 pounds of ice per 24 hours will be in effect.

DOE believes that the only proposed test procedure amendments applicable to automatic commercial ice makers covered under EPACT 2005 standards are those that update the referenced industry test procedures to their most current versions, clarify the test method and reporting requirements for automatic commercial ice makers designed to be connected to a remote compressor rack, and discontinue the use of a clarified energy use rate equation. DOE believes that these amendments would not significantly affect the measured energy or water use of equipment for which standards are currently in place. The updated industry test procedures, AHRI 810–2007 and ASHRAE Standard 29–2009, only expand the test procedure to continuous type ice makers and ice makers with capacities up to 4,000 pounds of ice per 24 hours; they do not affect the test procedure for ice makers that make cube type ice with capacities between 50 and 2,500 pounds of ice per 24 hours. See section III.A.1 for more information. The amendments that clarify the test method and reporting

requirements for automatic commercial ice makers designed to be connected to a remote compressor rack and discontinue the use of the clarified energy use rate equation are primarily editorial in nature and do not fundamentally affect the way automatic commercial ice makers are tested. These amendments are described in more detail in sections III.A.5 and III.A.7, respectively.

The remaining proposed test procedure amendments are only applicable to types of automatic commercial ice makers for which energy conservation standards do not currently exist. In the concurrent ACIM energy conservation standard rulemaking, DOE is proposing to establish energy conservation standards for batch type and continuous type ice makers with capacities up to 4,000 pounds of ice per 24 hours. This includes new energy conservation standards for batch type ice makers that produce cube type ice with capacities between 2,500 and 4,000 pounds of ice per 24 hours, batch type ice makers that produce other than cube type ice with capacities between 50 and 4,000 pounds of ice per 24 hours, and continuous type ice makers with capacities between 50 and 4,000 pounds of ice per 24 hours. However, these standards will not be promulgated until after the ACIM test procedure final rule is issued. Because there currently are no standards for the aforementioned types of ice makers, section 6293(e) does not apply to test procedure amendments that affect only those equipment types.

Because DOE does not believe the updated test procedure will alter the measured energy or water consumption of automatic commercial ice makers that are covered by existing DOE energy conservation standards, DOE proposes that use of the amendments be required upon the effective date of any test procedure final rule, 30 days after publication in the **Federal Register**.

DOE requests comment on its determination that the proposed test procedure amendments will not affect the measured energy or water consumption of automatic commercial ice makers that are currently covered under energy conservation standards. DOE also requests comment on the proposal that the use of the amended test procedure be required upon the effective date of any test procedure final rule, 30 days after publication in the **Federal Register**.

III. Discussion

As part of the current rulemaking on the energy conservation standard for commercial refrigeration equipment, DOE held a public meeting on December 16, 2011 to present its Framework Document (*http://www.eere.energy.gov/buildings/appliance_standards/commercial/pdfs/acim_framework_2010_11_04.pdf*) and to receive comments from interested parties. DOE considered the comments received as a result of the Framework Document public meeting and incorporated into this document certain recommendations, where appropriate. Responses to these comments appear throughout the discussion of test procedure amendments. The test procedure amendments DOE is proposing in this rulemaking were summarized in section II.A and are discussed in further detail in the following sections. Responses to comments that are not specifically addressed in the discussion of test procedure revisions appear in section III.B, which provides responses to comments in the following subject areas:

1. Treatment of Tube Type Ice Machines
2. Quantification of Auxiliary Energy Use
3. Measurement of Storage Bin Effectiveness
4. Establishment of a Metric for Potable Water Used in Making Ice
5. Standardization of Water Hardness for Measurement of Potable Water Used in Making Ice
6. Testing of Batch Type Ice Makers at the Highest Purge Setting

A. Summary of the Test Procedure Revisions

Today's proposed rule contains the following proposed changes to the test procedure in 10 CFR 431, subpart H.

1. Update References to Industry Standards to Most Current Versions

The current DOE test procedure for automatic commercial ice makers, established in the 2006 test procedure final rule, adopts ARI Standard 810–2003 as the test procedure used to measure the energy consumption of a piece of equipment to establish compliance with energy conservation standards set in EPACT 2005. 71 FR 71340, 71350 (Dec. 8, 2006). The DOE test procedure also references ASHRAE Standard 29–1988 (RA 2005). AHRI (previously ARI) Standard 810–2007 and ASHRAE Standard 29–2009 are designed to be used together to test automatic commercial ice makers. AHRI Standard 810–2007 specifies the standard rating conditions and provides relevant definitions of equipment, scope, and calculated or measured values. ASHRAE Standard 29 specifies how to conduct the test procedure, including the technical requirements and calculations. Since the publication of the 2006 test procedure final rule, AHRI has released an updated version of the test procedure, AHRI Standard 810–2007. ASHRAE subsequently updated their test procedure in 2009 to reflect the same changes. AHRI Standard 810–2007 and ASHRAE Standard 29–2009 amend the previous test procedures by expanding the capacity range to 4,000 pounds per day and providing for the testing of continuous type ice makers. In adopting the revised AHRI Standard 810–2007 and referencing ASHRAE Standard 29–2009, DOE is proposing to incorporate all the test procedure changes incorporated in the updated versions. At the ACIM Framework Document public meeting, AHRI stated its support for this proposal. (AHRI, No. 0016 at p. 139[1])

DOE requests comment on updating the referenced industry test procedures to the most current versions.

In addition, DOE proposes to make additional changes that expand the capacity range to larger capacity equipment, up to 4,000 pounds of ice per 24 hours, and include additional test methods for continuous type ice makers. These two changes are discussed in detail in the following two sections.

2. Expand Capacity Range to Larger Capacity Equipment

AHRI Standard 810–2007 establishes a capacity range of 50 to 4,000 pounds of ice per 24 hours at standard rating conditions. The previous standard, ARI Standard 810–2003, referenced by the current DOE test procedure, is limited to a capacity range of 50 to 2,500 pounds of ice per 24 hours. AHRI expanded the capacity range due to changes in the products offered by manufacturers. Specifically, some manufacturers offer larger capacity units that exceed the capacity range of the previous test procedure. AHRI's expansion of the capacity range does not affect the way ice makers are tested; it only provides for the same test procedure to be applied to larger capacity ice makers.

At the ACIM Framework Document public meeting, some interested parties commented that 4,000 pounds of ice per 24 hours was a natural ceiling for commercial equipment. (AHRI, No. 0016 at pp. 65 and 144; Manitowoc Ice,

[1] In the following discussion, comments will be presented along with a notation in the form "AHRI, No. 0016 at p. 139," which identifies a written comment DOE received and included in the docket of this rulemaking. DOE refers to comments based on when the comment was submitted in the rulemaking process. This particular notation refers to a comment (1) by AHRI, (2) in document number 0016 of the docket (available at regulations.gov), and (3) appearing on page 139.

No. 0016 at p. 66; Scotsman, No. 0016 at p. 68) Stakeholders also commented that there did not appear to be any issues in applying the test procedure to larger capacity equipment, except perhaps for providing enough conditioned air in the environmental chamber to test these machines. (Scotsman, No. 0016 at pp. 69 and 144)

While no manufacturers of equipment with capacities exceeding 4,000 pounds of ice per 24 hours attended the public meeting, Vogt, the primary manufacturer of equipment with capacities larger than 4,000 pounds per 24 hours, submitted a written comment suggesting that DOE expand the capacity limit to include equipment that produces up to 10,000 pounds of ice per 24 hours. Vogt further commented that this leads consumers to believe that larger capacity machines are not as efficient, when in fact they are more efficient, and prevents larger capacity equipment from participating in rebate programs or other energy efficiency programs.[2]

In analyzing the current ice maker market, DOE has found that approximately 99 percent of automatic commercial ice makers have capacities between 50 and 4,000 pounds of ice per 24 hours. However, DOE has identified a few automatic commercial ice makers with capacities that exceed 4,000 pounds of ice per 24 hours that are currently offered for sale in the United States. Further, DOE found that many of these larger capacity machines are marketed as commercial products for use in food sales, schools, and other commercial spaces and fall within the EPCA definition of an automatic commercial ice maker. (42 U.S.C. 6311(19))

DOE has analyzed the AHRI 810–2007 and ASHRAE Standard 29–2009 test procedure methods and believes that there are no technical issues with applying these methods to larger capacity equipment, up to 10,000 pounds of ice per 24 hours. In fact, this is how larger capacity ice makers are currently tested by manufacturers to voluntarily determine their energy performance. DOE understands that larger capacity ice makers require a larger environmental chamber to accommodate their increased physical size and the additional conditioned air required to maintain the test room at ambient conditions. In addition, there may be other issues related to marketing or burden when testing ice makers with capacities between 4,000 and 10,000 pounds of ice per 24 hours.

In weighing the various factors for and against establishing a test procedure covering ice makers with capacities between 4,000 and 10,000 pounds per 24 hours, DOE has determined that such test procedures would not be warranted at this time. Primarily, DOE does not believe that the increased burden association with this significant expansion in scope is justified due to the small market share of equipment with capacities greater than 4,000 pounds per 24 hours. Therefore, DOE proposes to expand the capacity range of the DOE test procedure to only include larger capacity automatic commercial ice makers with harvest rates between 50 and 4,000 pounds of ice per 24 hours.

DOE requests comment on expanding the capacity range from 50 to 2,500 pounds of ice per 24 hours to 50 to 4,000 pounds of ice per 24 hours.

3. Include Test Methods for Continuous Type Ice Makers

During the public comment period for the 2006 test procedure proposed rule, which adopted test procedures for the EPACT 2005 ACIM standards, interested parties requested that additional product classes be considered. Specifically, Howe Corporation requested that DOE test procedures and requirements be amended and expanded to apply a revised ARI Standard 810 to all automatic ice makers, regardless of ice-cube type. (docket number EE–RM/TP–05–500, Howe, No. 6 at pp. 3–4) [3] At that time, DOE stated that the test procedure for automatic commercial ice makers was adopted for two reasons: (1) To adopt methods for testing equipment for which EPACT 2005 set energy conservation standards and (2) to comply with the requirement that the test procedure for such ice makers be ARI Standard 810–2003, which only applies to the equipment that produces cube type ice. DOE added that expanding the energy conservation standard for automatic commercial ice makers to include equipment that produces ice other than cube type ice was outside the scope of that rulemaking proceeding. However, DOE noted that it is authorized to adopt standards for such other commercial ice makers (42 U.S.C. 6313(d)(2)), and that if and when DOE sought to adopt such standards, it intended to consider continuous type ice makers that produce flake type ice. 71 FR 71340, 71351 (Dec. 8, 2006).

AHRI Standard 810–2007 and ASHRAE Standard 29–2009 have been amended to allow for the testing of continuous type ice makers. The revised AHRI Standard 810–2007 and ASHRAE Standard 29–2009 adopt definitions for a "batch type ice maker" (also referred to as a cube type ice maker) and a "continuous type ice maker." A batch type ice maker is defined as an ice maker that has alternate freezing and harvesting periods. The standard further clarifies that in this definition the word "cube" does not refer to the specific shape or size of ice produced. A continuous type ice maker is defined as an ice maker that continually freezes and harvests ice at the same time. Continuous type ice makers primarily produce flake and nugget ice.

In addition, AHRI Standard 810–2007 and ASHRAE Standard 29–2009 provide explicit test methods for both batch and continuous type ice makers. The previous ARI Standard 810–2003 and ASHRAE Standard 29–1988(RA 2005), as referenced in the current DOE test procedure, do not include a method for testing continuous type ice makers. DOE intends to adopt AHRI Standard 810–2007 as the referenced DOE test procedure, including referencing ASHRAE Standard 29–2009 as the method of test. This would expand the current DOE test procedure to provide a method for testing continuous type ice makers, in addition to batch type ice makers. The test procedure provisions for testing continuous type ice makers would be used in conjunction with standards for automatic commercial ice makers that produce flake or nugget ice. These standards are being developed in the ongoing ACIM energy conservation standard rulemaking.

DOE requests comment on providing test methods for continuous type ice makers.

4. Standardize Ice Quality for Continuous Type Ice Makers

Continuous type ice makers typically produce ice that is not completely frozen. This means that there is some liquid water content in the total mass of ice product produced by continuous type ice makers. The specific liquid water content can be quantified in terms of ice hardness or ice quality and is usually represented in terms of percent of completely frozen ice present in the total ice product. Ice quality can vary significantly across different machines. DOE understands that the percentage of liquid water in the product of continuous ice makers is directly related to the measured energy consumption of

[2] Framework comments submitted by Vogt Ice to Detlef Westphalen, Navigant Consulting Inc, February 10, 2011.

[3] This notation refers to a comment that was submitted by Howe Corporation and is recorded in docket number EE–RM/TP–05–500 as comment number 6, and (2) a passage that appears on pages 3 and 4 of that document.

these machines. To provide comparability and repeatability of results, DOE proposes to standardize the energy consumption of continuous ice makers to a total mass of ice that is 32 degrees Fahrenheit (°F) with no liquid water content. At the December 16, 2010 Framework Document public meeting, Scotsman agreed that there may be some reason to standardize ice quality to 32 °F with no liquid water content. Scotsman further stated that there is also some utility in low quality ice. (Scotsman, No. 0016 at p. 160)

DOE proposes to standardize the ice quality of continuous type ice makers using the "Procedure for Determining Ice Quality" in section A.3 of normative annex A in ASHRAE Standard 29–2009. In this procedure, a calorimeter constant is calculated, which is essentially a ratio of the heat content of a given mass of 32 °F ice with no liquid water content (100 percent ice quality) divided by the heat content of the same mass of 32 °F ice and water mixture (less than 100 percent quality) produced by a continuous type ice maker. This is the inverse of the ice hardness factor, as defined in AHRI 810–2007, presented as a decimal. The calorimeter constant will be 1.0 for 100 percent ice quality product and greater than 1.0 for ice with some liquid water content. The calorimeter constant will be used to determine an adjustment factor based on the energy required to cool ice from 70 °F to 32 °F and produce a given amount of ice, as shown below:

$$\text{Ice Quality Adjustment Factor} = \left[\frac{144\,^{\text{Btu}}/_{\text{lb}} + 38\,^{\text{Btu}}/_{\text{lb}}}{\left(\frac{144\,^{\text{Btu}}/_{\text{lb}}}{\text{calorimeter constant}}\right) + 38\,^{\text{Btu}}/_{\text{lb}}}\right]$$

Note: Btu = British thermal units.

The measured energy consumption per 100 pounds of ice and the measured condenser water consumption, as determined using ASHRAE Standard 29–2009, will be multiplied by the adjustment factor to yield the scaled energy and condenser water consumption values, respectively. These values will be reported to DOE to show compliance with the energy conservation standard. The measured value of potable water used in making ice will not be multiplied by the calorimeter constant because all of the potable water is still used to produce usable product for continuous type ice makers.

In response to Scotsman's comment (Scotsman, No. 0016 at p. 160) regarding the utility of automatic commercial ice makers that produce low quality ice, this test method will not affect the availability of automatic commercial ice makers that produce lower quality ice; it will simply provide a method by which automatic commercial ice maker energy consumption and condenser water use results can be compared to a baseline ice quality.

DOE requests comment on the proposed method to normalize energy and condenser water consumption to 32 °F water with no water content for continuous type ice makers.

5. Clarify the Test Method and Reporting Requirements for Remote Condensing Automatic Commercial Ice Makers

EPCA establishes energy conservation standards for two types of remote condensing automatic commercial ice makers: (1) Remote condensing (but not remote compressor) and (2) remote condensing and remote compressor. (42 U.S.C. 6313(d)(1)) Remote condensing (but not remote compressor) ice makers must be sold and operated with a dedicated remote condenser that is in a separate section from the ice-making mechanism and compressor. Remote condensing and remote compressor automatic commercial ice makers may be operated with a dedicated remote condensing unit or connected to a remote compressor rack. Both of these remote refrigeration systems contain compressors and condensers that are in a separate section from the ice-making mechanism that they serve.

In assessing the current DOE and industry test procedures, DOE has noticed an inconsistency in the way the energy use of remote condensing and remote compressor ice makers that are designed to be connected to a remote compressor rack is reported. Remote condensing and remote compressor ice makers sold with a dedicated remote condensing unit report energy consumption of the total ice maker; including the energy consumption of the ice-making mechanism, the compressor, and the remote condenser or condensing unit. Ice makers that are meant to be used with a remote compressor rack report only the energy use of the ice-making mechanism and do not include any energy use associated with the compressors and condensers on the remote compressor rack. The compressor and condenser energy consumption are excluded because ice maker manufacturers do not have control of the energy efficiency of the remote compressor rack. In addition, the same remote compressor rack typically serves multiple equipment types in addition to automatic commercial ice makers, such as commercial refrigeration equipment and walk-in coolers and freezers.

At the Framework Document public meeting, DOE proposed three potential options to address this issue:

1. A calculation method that applies a default factor to the ice-making mechanism energy consumption that is representative of remote compressor rack energy use;

2. A measurement method that measures the energy use of a remote condensing and remote compressor ice maker with a designated remote condensing unit and reports the energy use of both the ice-making mechanism and the remote condensing unit; or

3. A measurement method that measures the energy use of a remote condensing and remote compressor ice maker with a designated remote condensing unit, but continues to report only the energy use associated with the ice-making mechanism.

In response to these options, Manitowoc Ice stated that while remote condensing automatic commercial ice makers could technically be tested using a default value for compressor efficiency if the refrigerant is measured, this would require a new test procedure and may not be justified given the market share of this equipment. (Manitowoc Ice, No. 0016 at pp. 149 and 153) Scotsman and AHRI reiterated that the market share of this equipment was small and was not expected to grow significantly. (Scotsman, No. 0016 at pp. 151–152; AHRI, No. 0016 at p. 150) Manitowoc Ice also commented that ice-making heads designed to be connected to remote condensing rack systems are essentially the same as those that are sold with a dedicated remote

condensing unit. (Manitowoc Ice, No. 0016 at p. 154)

DOE understands that the market share of this equipment is small. However, remote condensing ice makers that are designed to be sold for use with a remote rack system are covered equipment pursuant to the EPCA definition of an automatic commercial ice maker. (42 U.S.C. 6311(19)) In addition, as Manitowoc Ice mentioned, remote condensing ice makers designed to be connected to remote condensing rack systems are essentially the same as those that are sold with a dedicated remote condensing unit. Therefore, DOE believes testing remote condensing ice makers that are designed to be used with a remote condensing rack could be accomplished, without significant additional burden, by testing these units with a sufficiently sized dedicated remote condensing unit.

Option 1 above would require testing of remote condensing ice makers that are designed to be used with a remote compressor rack using a calculation methodology that would be more representative of the energy consumption of the remote compressor rack. This calculation method would apply a default factor to the ice-making mechanism which would be determined through measurement of the amount of cooling supplied to make ice. Information about the amount of cooling supplied by the refrigerant is not currently captured in the DOE test procedure. DOE believes that this additional testing would result in a significant additional burden on manufacturers that would not be warranted given the small market share of this equipment. In addition, the remote compressor rack is not covered as part of the automatic commercial ice maker and, thus, its energy consumption is not required to be captured by the DOE test procedure.

EPCA requires that test procedures "shall be reasonably designed to produce test results which reflect energy efficiency, energy use, and estimated operating costs of a type of industrial equipment (or class thereof) during a representative average use cycle (as determined by the Secretary), and shall not be unduly burdensome to conduct." (42 U.S.C. 6314(2)) DOE believes that testing all remote condensing and remote compressor automatic commercial ice makers that are designed to be connected to a remote compressor rack with a dedicated remote condensing unit will represent the energy consumption of this equipment without introducing undue burden. In addition, this method provides a straightforward and consistent way to compare the performance of remote condensing and remote compressor ice makers, both those sold with dedicated remote condensing units and those designed to be used with remote compressor rack systems. Therefore, DOE proposes that all remote condensing and remote compressor ice makers be tested with a dedicated remote condensing unit and report the energy use of the ice-making mechanism, the compressor, and the condenser.

DOE requests comment on the proposal to require testing of all remote condensing ice makers with a dedicated remote condensing unit and reporting of ice-making mechanism, compressor, and condenser energy use.

6. Provide a Test Method for Modulating Capacity Automatic Commercial Ice Makers

An ice maker could be designed for multiple capacity levels, either using a single compressor capable of multiple or variable capacities, or using multiple compressors. This would be attractive since ice makers operate at full capacity for only a small portion of the time, if at all. Such a system could produce ice more efficiently at a lower capacity level because there would be more surface area available relative to the mass flow of refrigerant. There is no evidence that any such system has been sold or tested anywhere in the world. However, the basic concept is illustrated by the current use of different capacity models using the same heat exchangers with different capacity compressors. For such product pairs, the lower capacity machine is generally more efficient.

At the Framework Document public meeting, the American Council for an Energy-Efficient Economy (ACEEE), represented by Adjuvant Consulting, stated that two-stage or modulating compressors should not be eliminated from the group of design options. (Adjuvant Consulting, No. 0016 at pp. 78–79)

While multiple or variable capacity systems (*i.e.,* a modulating system) could become a design feature in the future, DOE recognizes that there are currently no commercialized products or prototypes available. However, DOE believes that a test procedure can be developed that allows measurement of the efficiency benefits of variable capacity technologies. Multiple capacity systems can be rated under the current test procedure at their maximum capacity rating. This will continue to be an option for showing compliance with DOE energy conservation standards. Also, an optional test procedure to capture the energy and water efficiency benefits of modulating capacity systems could be developed to allow systems that use a variable or multiple capacity system to claim those savings. Incorporating a test method for modulating capacity systems into the test procedure could provide an opportunity for and incentivize future development of such systems that could use this technology to obtain a higher efficiency rating. This is valuable for manufacturers that may wish to qualify units for voluntary efficiency programs, such as the Consortium for Energy Efficiency (CEE) or ENERGY STAR.®

To capture the energy and water use of variable or multiple capacity systems, a test procedure would need to measure energy use in kilowatt-hours per 100 pounds of ice and water use in gallons per 100 pounds of ice of at least two production rates and calculate weighted average energy use and water use values. DOE proposes that, for modulating capacity systems, testing can be done at the maximum and minimum capacity settings. These values would then be averaged to determine the energy consumption and condenser water consumption of the ice maker. While equal weighting is perhaps not representative of actual utilization factors in the field, DOE would need additional data to develop a better informed estimate.

In addition, DOE proposes that this test procedure for multiple or modulating capacity systems be optional. Only testing at the maximum capacity setting would be required for modulating capacity systems. However, if a manufacturer wished to show increased energy savings due to the installation of variable capacity technologies, this test procedure also may be used to show compliance with the energy conservation standard.

DOE requests comment on the proposal to allow for optional test procedure for modulating capacity automatic commercial ice makers. Specifically, DOE requests comment on the weighting of the energy consumption at the minimum and maximum capacity settings.

7. Discontinue Use of a Clarified Energy Rate Calculation

The current DOE test procedure references ARI Standard 810–2003, with an amended calculation for determining the energy consumption rate for the purposes of compliance with DOE's energy conservation standards. ARI Standard 810–2003 references ASHRAE Standard 29–1988 (RA2005) as the method of test for this equipment, including the equations for calculating the energy consumption rate per 100

pounds of ice produced. In the 2006 test procedure proposed rule, DOE found the language in ASHRAE Standard 29–1988 (RA 2005) unclear and proposed that the energy consumption rate be normalized to 100 pounds of ice instead and be determined as follows. 71 FR 71340, 71350 (Dec. 8, 2006).

$$\text{Energy Consumption Rate (per 100 lbs ice)} = \frac{\text{Energy Consumed During Testing (kWh)}}{\text{Mass of Ice Collected During Testing (lbs)}} \times 100\%$$

At the September 2006 public meeting for the 2006 test procedure proposed rule, ARI commented in support of DOE's proposal to adopt ARI Standard 810–2003 as the test procedure for automatic commercial ice makers with the revised energy use rate equation. However, ARI further stated that the ARI and ASHRAE standards have been used without the clarification. 71 FR at 71351 (Dec. 8, 2006).

The equation contained in ASHRAE Standard 29–1988 (RA 2005), as adopted, directs that the energy consumption shall be calculated as the weight of ice produced during three specified time periods divided by the power consumed during those same three time periods. The specified time periods are defined as three complete cycles for batch type ice makers and three 14.4-minute periods for continuous type ice makers. The verbatim equation from ASHRAE Standard 29–1988 (RA 2005) is as follows:

$$\text{kWh}/_{100\text{ lb ice}} = 8.^{4a}/_{8}.^{2a} \times 100$$

In the above equation, kWh/100 lb ice refers to the desired energy consumption rate normalized per 100 pounds of ice produced; 8.4a refers to the section of the standard that describes the data to be recorded for the calculation of energy consumption, in this case the energy input in kilowatt-hours for the same periods prescribed for measurement of capacity; and 8.2a refers to the data to be recorded for the capacity test, specifically weight in pounds of ice produced for three prescribed periods of collection. This equation did not change in the update of ASHRAE Standard 29–1988 (RA 2005) to the most recent ASHRAE Standard 29–2009.

DOE concludes that the existing equation in ASHRAE Standard 29–2009 is interpreted differently than specified by the amended DOE equation for calculation of energy consumption rate. ASHRAE Standard 29–2009 directs that the energy consumption rate be calculated for each of the three periods specified in the test method as the power consumption for that period divided by the mass of ice collected in that period, as shown below.

For i = 1 to 3:

$$\text{Energy Use Rate}_i \left(\text{kWh}/_{100\text{ lb ice}}\right) = \frac{\text{Power input during period i (kWh)}}{\text{Mass of ice collected in period i (lb of ice)}}$$

This result is then averaged and multiplied by 100 to obtain an average energy consumption rate:

$$\text{Energy Use Rate} \left(\text{kWh}/_{100\text{ lb ice}}\right) = \frac{\sum_{i=1}^{3} \text{Energy Use Rate}_i \left(\frac{\text{kWh}}{\text{lb}}\text{ice}\right)}{3} \times 100$$

The previous concern with ambiguity around the energy consumption rate equation was based on the possibility that manufacturers might discard some ice captured during the periods specified in the capacity test and then divide the total energy use, for all three periods, by a lesser volume of ice, thereby overstating the energy consumption of the equipment. 71 FR 42178, 42184 (July 25, 2006). Although the text in ASHRAE Standard 29–2009 did not change between the 1988 and 2009 versions, DOE has reexamined the energy consumption rate calculations contained in the ASHRAE Standard 29–2009 test procedures and concluded that the procedure is clear and no ambiguity exists. The ASHRAE Standard 29–2009 test procedure clearly states that the mass of ice collected will be recorded for each of the three complete periods specified. ASHRAE Standard 29–2009 also states that the power consumption will be recorded for the same three periods. DOE believes that this statement is clear and does not provide opportunity for misinterpretation. Additionally, DOE acknowledges that this method may show more consistency in the average energy use rate calculation and, further, is the method typically used in industry today. DOE proposes to remove the clarification for the calculation of energy consumption rate in this rulemaking.

DOE requests comment on its proposal to incorporate AHRI Standard 810–2007, with reference to ASHRAE Standard 29–2009 as the method of test, without specification or clarification of the calculation for energy consumption rate.

B. Response to Additional Comments Raised by Interested Parties at the Framework Document Public Meeting

The following sections contain responses to comments received at the

December 16, 2011 Framework Document public meeting that were not specifically addressed in the discussion of test procedure revisions, including:

1. Treatment of Tube Type Ice Machines
2. Quantification of Auxiliary Energy Use
3. Measurement of Storage Bin Effectiveness
4. Establishment of a Metric for Potable Water Used in Making Ice
5. Standardization of Water Hardness for Measurement of Potable Water Used in Making Ice
6. Testing of Batch Type Ice Makers at the Highest Purge Setting

1. Treatment of Tube Type Ice Machines

At the Framework Document public meeting, the categorization of tube type ice machines was discussed. Scotsman commented that tube ice could be treated as a batch process in the same equipment class as cube ice. (Scotsman, No. 0016 at p. 43) Manitowoc Ice agreed, but cautioned against lumping them all together because of the different consumer applications and utilities, such as the larger footprint of tube type ice machines. (Manitowoc Ice, No. 0016 at pp. 49–50 and 53–54) Manitowoc further commented that tube ice can be tested under the currently available industry test procedures, but should be treated as a separate equipment class. (Manitowoc Ice, No. 0016 at p. 50)

Tube type automatic commercial ice makers produce cube, flake, or nugget ice. In making cube ice, they use a batch process, as do conventional cube ice machines. Because tube ice has lower clarity than cube ice from conventional machines, tube ice may have a different market. There are no tube ice machines of less than 2,000 pounds of ice per 24 hours on the market. Manufacturers are currently using the existing test procedure for tube ice machines.

DOE agrees with the comments from Scotsman and Manitowoc Ice regarding categorization of tube type ice machines, and finds that tube type machines can be tested under the currently available test procedures. Therefore, DOE proposes to clarify in the DOE test procedure that tube and other batch technologies can be tested by the current industry test procedures using the cube type test method.

2. Quantification of Auxiliary Energy Use

In assessing the operation and energy consumption of automatic commercial ice makers, DOE determined that there are potential phases of operation during the non-ice making periods that currently are not accounted for in the test procedure. Although DOE is not required to quantify auxiliary energy use, DOE is not prevented from including them in the test procedures and energy conservations standards for automatic commercial ice makers, if warranted. DOE examined the significance of these auxiliary energy loads for automatic commercial ice makers to determine if incorporation into the test procedure and energy conservation standard was justified.

At the Framework Document public meeting, Manitowoc Ice mentioned that standby energy use due to sensors could represent an electrical load as high as 10 watts in some units. (Manitowoc Ice, No. 0016 at p. 143) Manitowoc Ice further stated that although such standby electrical energy consumption exists in some cases, the overall energy consumption was negligible and does not warrant consideration in the test procedure or standard rulemakings. (Manitowoc Ice, No. 0016 at pp. 140–141)

DOE performed a preliminary assessment to corroborate the estimations of interested parties and found that energy use due to electrical sensors during non-ice-making periods contributed 1 percent or less to the total energy consumption of the ice maker. If DOE chose to quantify this load, a measurement of electrical consumption during non-ice-making times could be incorporated into the test procedure. Given the small magnitude of this energy use, DOE believes quantification of auxiliary energy use during non-ice-making periods is not justified. Note that the provision within EISA that standby mode energy usage must be quantified (42 U.S.C. 6295(gg)(2)(A)) only appears in the section that pertains to consumer products, and therefore does not apply to commercial equipment.

DOE requests comment on its determination that an additional test procedure to quantify auxiliary energy use during non-ice-making periods is not justified.

3. Measurement of Storage Bin Effectiveness

Energy use that occurs to replace ice that has melted in the ice storage bin prior to dispensing or use is currently quantified in the Canadian and Australian standards and test procedures for automatic commercial ice makers. In addition, Natural Resources Canada (NRCan) has incorporated storage bin effectiveness into its energy efficiency standard as a separate metric that applies only to self-contained automatic commercial ice makers. The NRCan standard for storage bin effectiveness ranges from 60 to 80 percent, depending on capacity of the ice storage bin.[4] If this range is representative of ice storage bin effectiveness, meltage could represent approximately 10 percent additional ice production, and thus 10 percent additional energy use, per 24 hours. Storage bin effectiveness will similarly impact condenser water use.

At the Framework Document public meeting, many manufacturers stated that energy use associated with ice storage was outside the scope of this rulemaking and the ice storage compartments were not refrigerated on any ice makers. (AHRI, No. 0016 at p. 84; Scotsman, No. 0016 at p. 84; Manitowoc Ice, No. 0016 at pp. 84–85) Manufacturers also commented that including ice storage bin effectiveness for only some ice makers would not be fair or provide an accurate comparison. (Manitowoc Ice, No. 0016 at p. 86)

A common metric used to quantify ice meltage in the ice storage bin is storage bin effectiveness. Storage bin effectiveness is defined as a theoretical expression of the fraction of ice that under specific rating conditions would be expected to remain in the ice storage bin 24 hours after it is produced, with units of percent. AHRI has a standard, AHRI 820–2000, that describes a test method for quantifying the effectiveness of ice storage bins. This method, or a similar method, is also used in the Canadian and Australian test procedures for automatic commercial ice makers to quantify ice storage bin effectiveness.

While quantifying the additional energy use associated with ice storage losses could contribute to additional energy savings, doing so would result in an inconsistency between the standards for self-contained and remote condensing ice makers or ice-making heads, and thus an increased burden for manufacturers of self-contained units. DOE believes that the additional burden associated with testing storage bin effectiveness is not warranted at this time. As such, DOE will not include a quantification of meltage in the storage bin in this rulemaking.

DOE requests comments or data related to the impact of storage bin effectiveness on the energy and water consumption of automatic commercial ice makers. Specifically, DOE requests comment on the appropriate test method and metric for storage bin effectiveness and the burden associated with adopting such a test method.

[4] CSA C742–08. *Energy Performance of automatic icemaker and storage bins.* Canadian Standards Association, Mississauga, Ontario, Canada.

4. Establishment of a Metric for Potable Water Used to Produce Ice

The current DOE energy conservation standard for automatic commercial ice makers established metrics of energy use per 100 pounds of ice for all equipment classes, and condenser water use per 100 pounds of ice produced for water-cooled models only. The current DOE test procedure references ARI Standard 810–2003 as the test procedure to calculate condenser water use. The updated AHRI Standard 810–2007 contains the same calculation for condenser water use.

However, automatic commercial ice makers consume potable water to produce ice as well. AHRI Standard 810–2007 defines "potable water use rate" as the amount of potable water used in making ice, including "dump" water. AHRI Standard 810–2007 defines "dump water" as the water drainage from an ice maker to control the clarity of ice or to prevent scaling. In this document, potable water used to produce ice will refer to the water that leaves the machine in the form of ice as well as any dump water or other excess that is expelled from the machine during the ice-making process.

While there is generally a positive relationship between energy use and potable water use, there may be a point at which the relationship between potable water use and energy consumption reverses. At the ACIM Framework Document public meeting, Manitowoc Ice and Scotsman both indicated that, from a technology standpoint, reducing potable water use generally improves energy efficiency, but if potable water use is reduced beyond a certain threshold, efficiency could decrease due to scaling. (Manitowoc Ice, No. 0016 at pp. 94–95; Scotsman, No. 0016 at p. 94) Larger amounts of dump water can benefit ice quality but increase overall potable water consumption.

Including potable water used to produce ice in the overall water metric could produce significant water savings and additional energy savings. At the ACIM Framework Document public meeting, the Appliance Standards Awareness Project (ASAP) indicated support for a potable water use metric, noting that they have seen significant improvements in the industry in lowering water consumption, but that there is still room for additional innovation. (ASAP, No. 0016 at pp. 15–16 and p. 93) The current U.S. Environmental Protection Agency ENERGY STAR standard for automatic ice makers limits water use in air-cooled machines to less than 25 gallons per 100 pounds of ice for remote condensing automatic commercial ice makers and 35 gallons per 100 pounds of ice for self-contained equipment.[5]

Both the previously referenced ARI Standard 810–2003 and the updated AHRI Standard 810–2007 provide a test method to measure the amount of water used in making ice in units of gallons per 100 pounds of ice.

At the Framework Document public meeting, DOE suggested the possibility of defining a new metric of "total water use" in gallons per 100 pounds of ice. Total water use was proposed to be calculated as the sum of the condenser water use and the potable water used to produce ice. Manitowoc Ice and Scotsman commented that potable water use and condenser water use should be kept as separate metrics because of their different uses and magnitudes. (Manitowoc Ice, No. 0016 at p. 97; Scotsman, No. 0016 at p. 145)

Following the ACIM Framework document public meeting, DOE examined the statutory authority provided in EPCA for the establishment of test procedures and energy and water conservation standards for automatic commercial ice makers and determined that DOE does not have a direct mandate from Congress to regulate potable water use under 42 U.S.C. 6313. Specifically, EPCA prescribes standards for condenser water use in cube type ice makers and explicitly states that condenser water use should not include potable water used to make ice. As such, DOE proposes not to regulate potable water used in making ice in this rulemaking.

DOE requests comment on its decision not to measure or regulate potable water used in making ice.

5. Standardization of Water Hardness for Measurement of Potable Water Used in Making Ice

Differences in water hardness can cause ice machines to use more or less energy and water. Harder water has a greater concentration of total dissolved solids and chemical ions, which affects the thermal properties of the water. Harder water depresses the freezing temperature of water and results in increased energy use to produce the same quantity of ice. In addition, harder water requires a higher purge setting to prevent scaling and a decrease in ice clarity.

At the Framework Document public meeting, ACEEE stated that it may be necessary to standardize water hardness in the test procedure due to the effects of water hardness on water and energy consumption. (Adjuvant Consulting, No. 0016 at pp. 96 and 102) However, Scotsman commented that water hardness will not dramatically affect energy consumption or performance on a short-term test and did not need to be standardized. (Scotsman, No. 0016 at p. 160)

While DOE recognizes that differences in water hardness can affect the energy and water consumption of an automatic commercial ice maker, DOE believes that there is still uncertainty in the causal relationship between total dissolved solids, ion concentration, and ice maker performance. Specifically, it is not clear whether total dissolved solids or ion concentration is more significant in impacting energy performance and reliability of an ice maker. As such, an appropriate standardized water hardness for use in a test procedure cannot be accurately specified, and even if it could, applying such a test procedure would increase the testing burden for manufacturers. Doing so would require: Additional data or information regarding (1) The relationship between total dissolved solids, ion concentration, and energy and water use; (2) the magnitude of these effects; and (3) specific testing methodologies that would produce repeatable results. Given the uncertainty in the relationship between water hardness and water and energy consumption, DOE is unable to conclude that this metric is either technically feasible or economically justified. In addition, water hardness would primarily impact potable water used in making ice, which DOE is not regulating in this rulemaking. As a result, DOE proposes not to standardize water hardness in the test procedure at this time, but requests additional data that would support evaluation of the need for a standardized water hardness test.

6. Test Batch Type Ice Makers at the Highest Purge Setting

Currently, automatic commercial ice makers are required to meet specific maximum allowable condenser water use levels, depending on equipment type, cooling type (water or air), and harvest rate (pounds of ice per 24-hour period). The water usage of automatic commercial ice makers varies by application, equipment type, and size.

At the Framework Document public meeting, ASAP cautioned that installers may install cube type ice makers with a purge setting in the highest water use position, which may result in

[5] U.S. Environmental Protection Agency. *Commercial Ice Machines Key Product Criteria.* 2008. (Last accessed March 5, 2011.) *http://www.energystar.gov/index.cfm?c=comm_ice_machines.pr_crit_comm_ice_machines.*

substantially higher water consumption in the field compared to the manufacturer tested water consumption. (ASAP, No. 0016 at p. 16)

Although both AHRI 810–2007 and ASHRAE Standard 29–2009 require that the ice makers be set up pursuant to a manufacturer's instruction, DOE acknowledges that this may not capture the maximum potable water consumption of the unit or, perhaps, the most common water consumption setting of the unit, as indicated by ASAP. However, DOE has neither the data to validate nor the authority to regulate how ice makers are typically installed in the field.

While testing units with their purge controls in the maximum water use position will allow the test procedure to capture the maximum potable water use and energy use of automatic commercial ice makers and, thus, prevent ice makers from being sold that have purge settings that would exceed the maximum water use standard, the level of purge water primarily impacts potable water used in making ice. As DOE is proposing not to regulate potable water used in making ice in this rulemaking, DOE does not believe it is justified to require testing of automatic commercial ice makers at the highest purge setting. Instead, DOE proposes to continue to require testing of automatic commercial ice makers in accordance with AHRI 810–2007 and ASHRAE Standard 29–2009. DOE will continue to investigate the magnitude and effects of this issue by gathering data related to national water hardness, the difference between manufacturer specified and maximum purge settings, and the way ice makers are typically installed in the field.

DOE requests comment on testing units at the highest water consumption purge setting. Specifically, DOE requests comment on the difference in energy and water consumption when tested at the maximum purge setting versus as specified by the manufacturer.

IV. Regulatory Review

A. Review Under Executive Order 12866

The Office of Management and Budget (OMB) has determined that test procedure rulemakings do not constitute "significant regulatory actions" under section 3(f) of Executive Order 12866, "Regulatory Planning and Review," 58 FR 51735 (Oct. 4, 1993). Accordingly, this proposed action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA) in the OMB.

B. Review Under the Regulatory Flexibility Act

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

For manufacturers of automatic commercial icemakers, the Small Business Administration (SBA) has set a size threshold, which defines those entities classified as "small businesses" for the purposes of the statute. DOE used the SBA's size standards published on January 31, 1996, as amended, to determine whether any small entities would be required to comply with the rule. 61 FR 3280, 3286, as amended at 67 FR 3041, 3045 (Jan. 23, 2002) and at 69 FR 29192, 29203 (May 21, 2004); see also 65 FR 30836, 30850 (May 15, 2000), as amended at 65 FR 53533, 53545 (Sept. 5, 2000). The size standards are codified at 13 CFR part 121. The standards are listed by North American Industry Classification System (NAICS) code and industry description and are available at *http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf.* Automatic commercial ice maker manufacturers are classified under NAICS 333415, "Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing." The SBA sets a threshold of 750 employees or less for an entity to be considered as a small business for this category.

In this NOPR, DOE proposes to update the industry test procedures referenced in the current DOE test procedure for automatic commercial ice makers. DOE is also proposing amendments to:

1. Expand the scope of the test procedure to include equipment with capacities from 50 to 4,000 pounds of ice per 24 hours;

2. Provide test methods for all batch type and continuous type ice makers;

3. Standardize the measurement of energy and water use for continuous type ice makers with respect to ice quality;

4. Specify the test method for remote condensing automatic commercial ice makers;

5. Specify an optional test method for modulating capacity ice makers; and

6. Discontinue the use of a clarified energy use rate calculation and instead calculate energy use per 100 pounds of ice of ice as specified in ASHRAE Standard 29.

Changes to the existing rule as described above have potential impacts on manufacturers who will be required to revise their current testing procedures for compliance. DOE has analyzed these impacts on small businesses and presents its findings below.

DOE examined the potential impacts of the additional testing procedures proposed in this rulemaking under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. In using these procedures, DOE conducted a more focused inquiry into small business manufacturers of products covered by this rulemaking. During its market survey, DOE used all available public information to identify potential small manufacturers. DOE's research involved the review of industry trade association membership directories (including the Association of Home Appliance Manufacturers), product databases (*e.g.,* Federal Trade Commission, the Thomas Register, California Energy Commission (CEC), and ENERGY STAR databases), individual company Web sites, and marketing research tools (*e.g.,* Dunn and Bradstreet reports) to create a list of companies that manufacture or sell automatic commercial ice makers covered by this rulemaking. DOE reviewed this data to determine whether the entities met the SBA's definition of a small business manufacturer of automatic commercial icemakers and screened out companies that do not offer products covered by this rulemaking, do not meet the definition of a "small business," or are foreign owned and operated.

DOE initially identified 24 distinct brands of automatic commercial ice makers available in the U.S. sold by a variety of distributors, wholesalers, and retail establishments. Of these 24 companies, 10 were determined to be foreign owned or outside the scope of the small business classification. Of the remaining 14 entities, 5 manufacture ice makers for residential uses and one company has filed for bankruptcy. Thus, DOE identified 8 manufacturers that

produce covered products and can be considered small businesses. From its analysis, DOE determined the expected impacts of the rule on affected small businesses and whether an IRFA was needed (*i.e.,* whether DOE could certify that this rulemaking would not have a significant economic impact on a substantial number of small entities).

Table IV.1 stratifies the small businesses according to their number of employees. The smallest company has 5 employees and the largest company 175 employees. The majority of the small businesses affected by this rulemaking (75 percent) have fewer than 50 employees and all but one of the small businesses have fewer than 100 employees.

TABLE IV.1—SMALL BUSINESS SIZE BY NUMBER OF EMPLOYEES

Number of employees	Number of small businesses	Percentage of small businesses	Cumulative percentage
1–10	3	38	38
11–20	0	0	38
21–30	2	25	63
31–40	1	13	75
41–50	0	0	75
51–60	0	0	75
61–70	0	0	75
71–80	0	0	75
81–90	1	13	88
91–100	0	0	88
101–110	0	0	88
111–120	0	0	88
121–130	0	0	88
131–140	0	0	88
141–150	0	0	88
150–160	0	0	88
160–170	0	0	88
170–180	1	13	100

Currently, only automatic commercial ice makers that produce cube type ice with capacities between 50 and 2,500 pounds of ice per 24 hours must be tested using the DOE test procedure to show compliance with energy conservation standards established in EPACT 2005. Automatic commercial ice makers with larger capacities, batch type ice makers that produce other than cube type ice, and continuous type ice makers of any capacity have not been subject to this rule. This rulemaking would institute new testing requirements for automatic commercial batch type ice makers that produce cube type ice with capacities between 2,500 and 4,000 pounds of ice of ice per 24 hours, batch type ice makers that produce other than cube type ice, and continuous type ice makers of all capacities. The costs to manufacturers associated with these testing procedures were estimated to range from $5,000 to $7,500 per tested model. This estimate is based on input from manufacturers and third party testing labs for completing a test as specified by AHRI Standard 810–2007 on automatic commercial ice makers. Additional testing requirements will be mandatory for continuous type ice makers to assess ice quality. Discussion and quantification of these two additional rules is provided below.

The additional test methods required for continuous type ice makers will standardize energy and water use with respect to ice quality. This test will consist of performing an additional calorimetry test, as specified in ASHRAE Standard 29–2009. DOE estimates that performing this test will require 2 additional hours of laboratory time, including the time to perform necessary calculations, per unit. Costs associated with the calorimetry test have been estimated by DOE to equal approximately 10 percent of the AHRI 810 test or $500 to $740. These costs would not include those associated with transportation, assuming that the unit would be analyzed at the same time as the required AHRI 810 test. DOE estimates that 28 percent of all automatic commercial ice makers would be subject to this additional test procedure. This estimate was developed based on publicly available listings of automatic commercial ice makers (*e.g.,* AHRI and CEC databases) and manufacturer Web sites.

The primary cost for small businesses under this rulemaking would result from the aforementioned additional testing requirements. These costs were applied to the number of existing designs subject to testing requirements outlined in this rulemaking, which DOE estimated at 30 models. Further, DOE assumes that each company would introduce a new base model in each year (total of 8 new models for testing) of the 5-year (2015–2019) analysis time horizon. Thus, costs are most significant in the first year following implementation of the new testing requirements as existing models are tested but decline in future years as the requirements are applied only to new models. Two scenarios were developed to reflect the low- and high-end costs estimates for each test presented previously in this section. Based on these assumptions, testing costs for small businesses were estimated at $154,200 to $228,216 in 2015 and $41,120 to $60,858 in 2016 through 2019.

In addition to testing costs, DOE estimates an additional $5,147 in review and filing costs over the 5-year analysis time horizon. DOE bases its estimate on the assumptions that it would take an engineer 2 hours to communicate with the testing laboratory, review test results, prepare adequate documentation, and file the report. The average hourly salary for an engineer completing these tasks is estimated at $38.74.[6] Fringe benefits are estimated at 30 percent of total compensation, which brings the hourly costs to employers associated with review and filing of reports to $55.34.[7]

[6] U.S. Department of Labor, Bureau of Labor Statistics. 2009. National Occupational Employment and Wage Estimates. Washington, DC.

[7] U.S. Department of Labor, Bureau of Labor Statistics. 2010. Employer Costs for Employee

Continued

The incremental costs incurred by small businesses to implement the requirements of this rulemaking are summarized in Table IV.2. Total costs to small businesses are estimated at $323,827 to $476,793 over the 5-year analysis time horizon. The present value costs of this rulemaking on small businesses are estimated at $227,512 to $334,982, or $28,439 to $41,873 per small business. Annual costs are discounted using a 7 percent real discount rate, as recommended in OMB Circular A–94.

TABLE IV.2—ANNUAL COSTS OF COMPLIANCE FOR SMALL BUSINESSES (2015–2019)

Year	Testing costs		Review/filing costs	Total costs		Discounted costs	
	Low end	High end		Low end	High end	Low end	High end
2015	$154,200	$228,216	$2,490	$156,690	$230,706	$119,538	$176,005
2016	41,120	60,858	664	41,784	61,522	29,791	43,864
2017	41,120	60,858	664	41,784	61,522	27,843	40,995
2018	41,120	60,858	664	41,784	61,522	26,021	38,313
2019	41,120	60,858	664	41,784	61,522	24,319	35,806
Totals	154,200	228,216	2,490	156,690	230,706	119,538	176,005
Average Cost per Small Business						28,439	41,873

DOE seeks comment on its estimated additional cost of testing due to the new requirements for testing presented in this NOPR. Specifically, DOE seeks comment on the impacts of the additional cost of testing on small manufacturers.

The findings of the DOE analysis suggest that small business manufacturers of automatic commercial ice makers would not be disproportionally impacted by the proposed energy conservation standard, relative to their competition. Testing procedures are required for each base model and only models produced by manufacturers that are covered by this rule would be required to be tested. Research conducted by DOE indicates that the small entities affected by this regulation produce fewer automatic commercial ice makers, on average, when compared to larger businesses. Small businesses manufacture, on average, 4 base models covered by this rule, while large businesses manufacture an average of 34 affected base models. Thus, small businesses are subject to fewer testing procedures for base models, and testing costs for large businesses are estimated to be approximately 8.5 times higher than costs for small businesses. DOE has, therefore, concluded that large and small entities would incur a proportional distribution of costs associated with the new testing requirements.

DOE conducted an analysis to measure the testing cost burden relative to the net profits of small manufacturers. The analysis utilized financial data gathered from other public sources to derive the average annual net profits of the small businesses impacted by this rule. The average industry net profit margin was estimated at 7.74 percent.[8] Net profits represent gross profits minus all overhead costs and expenditures. The annualized costs associated with this rulemaking were then compared to estimated net profits to determine the magnitude of the cost impacts of this regulation on small businesses. Based on this analysis, DOE estimates that the total increase in testing burden amounts to approximately 0.8 percent or 1.2 percent of low and high end cost estimates, respectively. DOE further estimates that the cost burden of the testing procedures is equal to approximately 0.1 percent of average annual sales ($8.9 million) per small entity affected by this regulation. DOE concludes that these values do not represent a significant economic impact.

Based on the criteria outlined above, DOE has determined that the proposed testing procedure amendments would not have a "significant economic impact on a substantial number of small entities," and the preparation of a regulatory flexibility analysis is not warranted. DOE will transmit the certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the Small Business Administration for review under 5 U.S.C. 605(b).

DOE seeks comment on its reasoning that the proposed test procedure changes would not have a significant impact on a substantial number of small entities.

C. Review Under the Paperwork Reduction Act of 1995

Manufacturers of automatic commercial ice makers must certify to DOE that their equipment complies with any applicable energy conservation standard. In certifying compliance, manufacturers must test their equipment according to the DOE test procedure for automatic commercial ice makers, including any amendments adopted for that test procedure. DOE has proposed regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, including automatic commercial ice makers. 75 FR 56796 (Sept. 16, 2010). The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been submitted to OMB for approval. Public reporting burden for the certification is estimated to average 20 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the

Compensation—Management, Professional, and Related Employees. Washington, DC.

[8] BizStats. *Free Business Statistics and Financial Ratios. Industry Income-Expense Statements.* (Last accessed February 17, 2011.) <*http://www.bizstats.com/corporation-industry-financials/manufacturing-31/machinery-manufacturing-333/ventilation-heating-a-c-and-commercial-refrigeration-equipment-333410/show*>.

burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to Charles Llenza (see **ADDRESSES**) and by e-mail to *Christine_J._Kymn@omb.eop.gov.*

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

D. Review Under the National Environmental Policy Act

In this proposed rule, DOE proposes amendments to test procedures that may be used to implement future energy conservation standards for automatic commercial ice makers. DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*). The rule is covered by Categorical Exclusion A5, for rulemakings that interpret or amend an existing rule without changing the environmental effect, as set forth in DOE's NEPA regulations in appendix A to subpart D, 10 CFR part 1021. This rule would not affect the quality or distribution of energy usage and, therefore, would not result in any environmental impacts. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, "Federalism," 64 FR 43255 (Aug. 4, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined today's proposed rule and has determined that it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the equipment that is the subject of today's proposed rule. States can petition DOE for a waiver of such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297) No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

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

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA; Pub. L. 104–4) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. For proposed regulatory actions likely to result in a rule that may cause expenditures by State, local, and Tribal governments in the aggregate or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish estimates of the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed "significant intergovernmental mandate" and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820. (This policy is also available at *http://www.gc.doe.gov.*) Today's proposed rule contains neither an intergovernmental mandate nor a mandate that may result in the expenditure of $100 million or more in any year, so these requirements do not apply.

H. Review Under the Treasury and General Government Appropriations Act, 1999

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

I. Review Under Executive Order 12630

DOE has determined, under Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights," 53 FR 8859 (March 15, 1988), that this proposed regulation, if promulgated as a final rule, would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general

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

K. Review Under Executive Order 13211

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use," 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OIRA, within OMB, a Statement of Energy Effects for any proposed significant energy action. A "significant energy action" is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

Today's regulatory action to amend the test procedures for measuring the energy efficiency of automatic commercial ice makers is not a significant regulatory action under Executive Order 12866. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as a significant energy action by the Administrator of OIRA. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects.

L. Review Under Section 32 of the Federal Energy Administration Act of 1974

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–91), DOE must comply with section 32 of the Federal Energy Administration Act of 1974 (Pub. L. 93–275), as amended by the Federal Energy Administration Authorization Act of 1977 (15 U.S.C. 788). Section 32 provides in relevant part that, where a proposed rule authorizes or requires use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Attorney General and the Chairman of the Federal Trade Commission concerning the impact of the commercial or industry standards on competition.

On December 8, 2006, DOE published a final rule that adopted the test procedure specified ARI Standard 810–2003, "Performance Rating of Automatic Commercial Ice-Makers," section 3, "Definitions," section 4, "Test Requirements," and section 5, "Rating Requirements," with a revised method for calculating the energy consumption rate. ARI Standard 810–2003 references the ASHRAE Standard 29–1988 (RA 2005), "Method of Testing Automatic Ice Makers," as the method of test. 71 FR 71340, 71350. The proposed rule incorporates testing methods contained in the revisions to these commercial standards, AHRI Standard 810–2007, "Performance Rating of Automatic Commercial Ice-Makers," section 3, "Definitions," section 4, "Test Requirements," and section 5, "Rating Requirements" and ASHRAE Standard 29–2009, "Method of Testing Automatic Ice Makers." DOE has evaluated these standards and is unable to conclude whether they fully comply with the requirements of section 323(b) of the Federal Energy Administration Act (*i.e.,* whether they were developed in a manner that fully provides for public participation, comment, and review).

As required by section 32(c) of the Federal Energy Administration Act of 1974, as amended, DOE will consult with the Attorney General and the Chairman of the Federal Trade Commission before prescribing a final rule about the impact on competition of using the methods contained in these standards.

V. Public Participation

A. Attendance at Public Meeting

The time, date, and location of the public meeting are listed in the **DATES** and **ADDRESSES** sections at the beginning of this document. If you plan to attend the public meeting, please notify Ms. Brenda Edwards at (202) 586–2945 or *Brenda.Edwards@ee.doe.gov.*

As explained in the **ADDRESSES** section, foreign nationals visiting DOE Headquarters are subject to advance security screening procedures.

In addition, you can attend the public meeting via webinar. Webinar registration information, participant instructions, and information about the capabilities available to webinar participants will be published on DOE's Web site *http://www.eere.energy.gov/buildings/appliance_standards/commercial/automatic_ice_making_equipment.html.* Participants are responsible for ensuring their systems are compatible with the webinar software.

B. Procedure for Submitting Prepared General Statements for Distribution

Any person who plans to present a prepared general statement may request that copies of his or her statement be made available at the public meeting. Such persons may submit requests, along with an advance electronic copy of their statement in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format, to the appropriate address shown in the **ADDRESSES** section at the beginning of this notice. The request and advance copy of statements must be received at least one week before the public meeting and may be e-mailed, hand-delivered, or sent by mail. DOE prefers to receive requests and advance copies via e-mail. Please include a telephone number to enable DOE staff to make a follow-up contact, if needed.

C. Conduct of Public Meeting

DOE will designate a DOE official to preside at the public meeting and may also employ a professional facilitator to aid discussion. The meeting will not be a judicial or evidentiary-type public hearing, but DOE will conduct it in accordance with section 336 of EPCA (42 U.S.C. 6306) A court reporter will record the proceedings and prepare a transcript. DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the public meeting. After the public meeting, interested parties may submit further comments on the proceedings as well as on any aspect of the rulemaking until the end of the comment period.

The public meeting will be conducted in an informal conference style. DOE will present summaries of comments received before the public meeting, allow time for prepared general statements by participants, and encourage all interested parties to share their views on issues affecting this rulemaking. Each participant will be allowed to make a general statement (within DOE-determined time limits) prior to the discussion of specific topics. DOE will permit, as time allows, other participants to comment briefly on any general statements.

At the end of all prepared statements on a topic, DOE will permit participants to clarify their statements briefly and comment on statements made by others. Participants should be prepared to

answer questions from DOE and other participants concerning these issues. DOE representatives may also ask questions of participants concerning other matters relevant to this rulemaking. The official conducting the public meeting will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules or modification of the above procedures that may be needed for the proper conduct of the public meeting.

A transcript of the public meeting will be included in the docket, which can be viewed as described in the *Docket* section at the beginning of this notice. In addition, any person may buy a copy of the transcript from the transcribing reporter.

D. Submission of Comments

DOE will accept comments, data, and other information regarding the proposed rule before or after the public meeting, but no later than the date provided in the **DATES** section at the beginning of this proposed rule. Interested parties may submit comments using any of the methods described in the **ADDRESSES** section at the beginning of this notice.

Submitting comments via regulations.gov. The regulations.gov webpage will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to regulations.gov information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (CBI). Comments submitted through regulations.gov cannot be claimed as CBI. Comments received through the Web site will waive any CBI claims for the information submitted. For information on submitting CBI, see the *Confidential Business Information* section.

DOE processes submissions made through regulations.gov before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that regulations.gov provides after you have successfully uploaded your comment.

Submitting comments via e-mail, hand delivery, or mail. Comments and documents submitted via e-mail, hand delivery, or mail also will be posted to regulations.gov. If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information on a cover letter. Include your first and last names, e-mail address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. E-mail submissions are preferred. If you submit via mail or hand delivery, please provide all items on a CD, if feasible. It is not necessary to submit printed copies. No facsimiles (faxes) will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format.

Provide documents that are not secured, are written in English, and are free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 and 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via e-mail, postal mail, or hand delivery two well-marked copies: one copy of the document marked confidential including all the information believed to be confidential, and one copy of the document marked non-confidential with the information believed to be confidential deleted. Submit these documents via e-mail or on a CD, if feasible. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include: (1) A description of the items; (2) whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) when such information might lose its confidential character due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

E. Issues on Which DOE Seeks Comment

Although comments are welcome on all aspects of this rulemaking, DOE is particularly interested in receiving comments on following issues.

Issues presented in the preamble to the proposed rule:

1. DOE requests comment on its determination that the proposed test procedure amendments will not affect the measured energy or water consumption of automatic commercial ice makers that are currently covered under energy conservation standards. DOE also requests comment on the proposal that the use of amended test procedure be required upon the effective date of any test procedure final rule, 30 days after publication.

2. DOE requests comment on updating the referenced industry test procedures to the most current version.

3. DOE requests comment on expanding the capacity range from 50 to 2,500 pounds of ice per 24 hours to 50

to 4,000 pounds of ice per 24 hours. DOE requests comment on providing test methods for continuous type ice makers.

4. DOE requests comment on the proposed method to normalize energy and condenser water consumption to 32 °F water with no water content for continuous type ice makers.

5. DOE requests comments or data related to the impact of storage bin effectiveness on the energy and water consumption of automatic commercial ice makers. Specifically, DOE requests comment on the appropriate test method and metric for storage bin effectiveness and the burden associated with adopting such a test method.

6. DOE requests comment on the proposal to require testing of all remote condensing ice makers with a dedicated remote condensing unit and reporting of ice-making mechanism, compressor, and condenser energy use.

7. DOE requests comment on the proposal to allow for optional test procedure for modulating capacity automatic commercial ice makers. Specifically, DOE requests comment on the weighting of the energy consumption at the minimum and maximum capacity settings.

8. DOE requests comment on its proposal to incorporate AHRI Standard 810–2007 without specification or clarification as to the calculation for energy.

9. DOE requests comment on its determination that an additional test procedure to quantify auxiliary energy use during non-ice making periods is not justified given the relative magnitude of energy consumption.

10. DOE requests comment on its decision not to measure potable water used in making ice.

11. DOE requests additional data that would support evaluation of the need for a standardized water hardness test.

12. DOE requests comment on testing units at the highest water consumption purge setting. Specifically, DOE requests comment on the difference in energy and water consumption when tested at the maximum purge setting versus the purge setting as specified by the manufacturer.

13. DOE seeks comment on its estimated additional cost of testing due to the new requirements for testing presented in this NOPR. Specifically, DOE seeks comment on the impacts of the additional cost of testing on small manufacturers.

14. DOE seeks comment on its reasoning that the proposed test procedure changes will not have a significant impact on a substantial number of small entities.

VI. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of today's proposed rule.

List of Subjects in 10 CFR Part 431

Administrative practice and procedure, Confidential business information, Energy conservation test procedures, Incorporation by reference, Reporting and recordkeeping requirements, and Small business.

Issued in Washington, DC, on March 24, 2011.

Kathleen Hogan,

Deputy Assistant Secretary for Energy Efficiency, Office of Technology Development, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, DOE proposes to amend part 431 of title 10, Code of Federal Regulations to read as follows:

PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT

1. The authority citation for part 431 continues to read as follows:

Authority: 42 U.S.C. 6291–6317.

2. Section 431.132 is amended by adding in alphabetical order the definitions of "batch type ice maker" and "continuous type ice maker;" and revising the definition of "energy use" to read as follows:

§ 431.132 Definitions concerning automatic commercial ice makers.

* * * * *

Batch type ice maker means an ice maker having alternate freezing and harvesting periods. This includes automatic commercial ice makers that produce cube type ice, tube type automatic commercial ice makers, and other batch technologies. Also referred to as cube type ice maker in AHRI Standard 810–2007 (incorporated by reference, see § 431.133), AHRI Standard 810–2007's definition clarifies that "cube" does not reference a specific size or shape and includes all automatic commercial ice makers with alternate freezing and harvesting periods.

Continuous type ice maker means an ice maker that continuously freezes and harvests ice at the same time.

* * * * *

Energy use means the total energy consumed, stated in kilowatt hours per one-hundred pounds (kWh/100 lb) of ice stated in multiples of 0.1. For remote condensing (but not remote compressor) automatic commercial ice makers and remote condensing and remote compressor automatic commercial ice makers, total energy consumed shall include the energy use of the ice-making mechanism, the compressor, and the remote condenser or condensing unit.

* * * * *

3. Section 431.133 is revised to read as follows:

§ 431.133 Materials incorporated by reference.

(a) *General.* We incorporate by reference the following standards into Subpart H of Part 431. The material listed has been approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Any subsequent amendment to a standard by the standard-setting organization will not affect the DOE regulations unless and until amended by DOE. Material is incorporated as it exists on the date of the approval and a notice of any change in the material will be published in the Federal Register. All approved material is available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.* Also, this material is available for inspection at U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, 6th Floor, 950 L'Enfant Plaza, SW., Washington, DC 20024, 202–586–2945, or go to: *http://www1.eere.energy.gov/buildings/appliance_standards/.* Standards can be obtained from the sources listed below.

(b) *AHRI.* The Gas Appliance Manufacturers Association (GAMA) merged in 2008 with the Air-Conditioning and Refrigeration Institute to become the Air-Conditioning, Heating, and Refrigeration Institute (AHRI). Anyone can obtain a copy of AHRI Standard 810–2007 from the Air-Conditioning, Heating, and Refrigeration Institute, 2111 Wilson Blvd, Suite 500, Arlington, VA 22201, (703) 524–8800, *ahri@ahrinet.org,* or *http://www.ahrinet.org/Content/StandardsProgram_20.aspx.*

(1) Air-Conditioning, Heating, and Refrigeration Institute Standard 810–2007, "Performance Rating of Automatic Commercial Ice Makers," ("AHRI Standard 810–2007"), IBR approved for § 431.134.

(2) [Reserved].

(c) *ASHRAE.* American Society of Heating, Refrigerating and Air-

Conditioning Engineers, Inc., 1791 Tullie Circle, NE., Atlanta, GA 30329, (404) 636–8400, *ashrae@ashrae.org,* or *http://www.ashrae.org.*

(1) American National Standards Institute/American Society of Heating, Refrigeration, and Air-Conditioning Engineers Standard 29–2009, ("ASHRAE Standard 29–2009"), "Method of Testing Automatic Ice Makers," IBR approved for § 431.134.

(2) [Reserved].

4. Section 431.134 is revised to read as follows:

§ 431.134 Uniform test methods for the measurement of energy and water consumption of automatic commercial ice makers.

(a) *Scope.* This section provides the test procedures for measuring, pursuant to EPCA, the energy use in kilowatt hours per 100 pounds of ice (kWh/100 lb ice) and the condenser water use in gallons per 100 pounds of ice (gal/100 lb ice) of automatic commercial ice makers with capacities between 50 and 4,000 pounds of ice per 24 hours.

(b) *Testing and Calculations.* Measure the energy use and the condenser water use of each covered product by conducting the test procedures set forth in AHRI Standard 810–2007, section 3, "Definitions," section 4, "Test Requirements," and section 5, "Rating Requirements" (incorporated by reference, see § 431.133). Where AHRI Standard 810–2007 references "ASHRAE Standard 29," ASHRAE Standard 29–2009 shall be used (incorporated by reference, see § 431.133).

(1) For batch type automatic commercial ice-making heads, remote condensing (but not remote compressor) automatic commercial ice makers, and remote condensing and remote compressor automatic commercial ice makers; the energy use and condenser water use will be reported as measured in this paragraph (b), including the energy and water consumption, as applicable, of the ice-making mechanism, the compressor, and the condenser or condensing unit.

(2)(i) For continuous type automatic commercial ice makers, determine the energy use and condenser water use by multiplying the energy consumption or condenser water use as measured in this paragraph (b) by the ice quality adjustment factor, determined using the following equation:

$$\text{Ice Quality Adjustment Factor} = \left[\frac{144\,^{\text{Btu}}/_{\text{lb}} + 38\,^{\text{Btu}}/_{\text{lb}}}{\left(\frac{144\,^{\text{Btu}}/_{\text{lb}}}{\text{calorimeter constant}}\right) + 38\,^{\text{Btu}}/_{\text{lb}}}\right]$$

(ii) Determine the calorimeter constant as specified in the "Procedure for Determining Ice Quality" in section A.3 of normative annex A of ASHRAE Standard 29–2009 (incorporated by reference, see § 431.133).

(3) For batch and continuous type automatic ice makers with multiple capacity settings, determine the energy use and condenser water use by performing the test procedures in this section at the highest capacity setting. The energy consumption and condenser water use may optionally be determined by testing the multiple capacity automatic commercial ice makers at both the highest and the lowest capacity settings and averaging the two results.

[FR Doc. 2011–7728 Filed 4–1–11; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 234

[Regulation HH; Docket No. R–1412]

RIN 7100–AD71

Financial Market Utilities

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of proposed rulemaking.

SUMMARY: Under section 805(a)(1)(A) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"), the Board of Governors of the Federal Reserve System (the "Board") is required to promulgate risk-management standards governing the operations related to the payment, clearing, and settlement activities of certain financial market utilities ("FMUs") that are designated as systemically important by the Financial Stability Oversight Council (the "Council"). In addition, under section 806(e) of the Dodd-Frank Act, the Board is required to prescribe regulations setting forth the standards for determining when advance notice is required to be provided by a designated FMU for which the Board is the Supervisory Agency when the designated FMU proposes to change its rules, procedures, or operations that could materially affect the nature or level of risks presented by the designated FMU. The Board is proposing new Part 234 to Title 12 of the Code of Federal Regulations to implement these provisions of the Dodd-Frank Act.

DATES: Comments on this notice of proposed rulemaking must be received by May 19, 2011.

ADDRESSES: You may submit comments, identified by Docket No. R–1412 and RIN No. AD–7100–AD71, by any of the following methods:

- *Agency Web site: http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: regs.comments@federalreserve.gov.* Include the docket number in the subject line of the message.
- *Facsimile:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: Jennifer A. Lucier, Manager (202) 872–7581, Division of Reserve Bank Operations and Payment Systems; Christopher W. Clubb, Senior Counsel (202) 452–3904, or Kara L. Handzlik, Senior Attorney (202) 452–3852, Legal Division; for users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION:

I. Background

A. Financial Market Utilities

FMUs, such as payment systems, central securities depositories, and central counterparties, are critical components of the nation's financial system. FMUs are multilateral organizations that provide the essential infrastructure to clear and settle payments and other financial transactions, upon which the financial markets and the broader economy rely to function effectively. Financial institutions, such as banks, participate in FMUs pursuant to a common set of rules and procedures, a technical infrastructure, and a risk-management framework. The basic risks that FMUs must manage include credit risk, liquidity risk, settlement risk, operational risk, and legal risk. These risks arise between financial institutions and FMUs as they settle payments and other financial transactions. The FMUs and their participating institutions are responsible for managing these risks on an individual and a collective basis.

Financial stability requires that the financial infrastructure, including FMUs, be robust and well managed. If a systemically important FMU fails to perform as expected or fails to measure, monitor, and manage its risks effectively, it could pose significant risk to its participants and the financial system more broadly. For example, the inability of an FMU to complete settlement on time could create credit or liquidity problems for its participants or other FMUs. An FMU, therefore, should have an appropriate and robust risk-management framework, including sound governance arrangements, and appropriate policies and procedures to measure, monitor, and manage its risks.

B. Dodd-Frank Wall Street Reform and Consumer Protection Act

Title VIII of the Dodd-Frank Act, titled the "Payment, Clearing, and Settlement Supervision Act of 2010," was enacted to mitigate systemic risk in the financial system and to promote financial stability, in part, through enhanced supervision of designated FMUs.[1] Under section 803, an FMU is defined as a person that manages or operates a multilateral system for the purpose of transferring, clearing, or settling payments, securities, or other financial transactions among financial institutions or between financial institutions and the person. Pursuant to section 804 of the Dodd-Frank Act, the Council is required to designate those FMUs that the Council determines are, or are likely to become, systemically important.[2] Designation by the Council makes an FMU subject to the supervisory framework set out in Title VIII.

Section 805(a)(1)(A) of the Dodd-Frank Act requires the Board to prescribe, by rule or order, risk-management standards governing the operations related to the payment, clearing, and settlement activities of certain designated FMUs. With respect to a designated FMU that is a derivatives clearing organization registered under section 5b of the Commodity Exchange Act or a clearing agency registered under section 17A of the Securities Exchange Act of 1934 (collectively, "designated clearing entities"), the Commodity Futures Trading Commission ("CFTC") or the Securities and Exchange Commission ("SEC"), respectively, may each prescribe regulations, in consultation with the Council and the Board, containing applicable risk-management standards.[3]

In prescribing the standards, section 805(a)(1) requires the Board to take into consideration relevant international standards and existing prudential requirements.[4] In addition, as set out in section 805(b) of the Dodd-Frank Act, the objectives and principles for the risk-management standards are to (1) promote robust risk management, (2) promote safety and soundness, (3) reduce systemic risks, and (4) support the stability of the broader financial system. Section 805(c) of the Dodd-Frank Act also states that risk-management standards may address areas such as (1) risk-management policies and procedures, (2) margin and collateral requirements, (3) participant or counterparty default policies and procedures, (4) the ability to complete timely clearing and settlement of financial transactions, (5) capital and financial resource requirements for designated FMUs, and (6) other areas that are necessary to achieve the objectives and principles for risk-management standards in section 805(b). Designated FMUs are required to conduct their operations in compliance with the applicable risk-management standards.

In addition to compliance with the applicable risk-management standards, section 806(e)(1)(B) of the Dodd-Frank Act requires a designated FMU to provide at least 60 days' advance notice to its Supervisory Agency (as defined below) of any proposed change to its rules, procedures, or operations that could, as defined in rules of each Supervisory Agency, materially affect the nature or level of risks presented by the designated FMU. Each Supervisory Agency must prescribe regulations that define and describe the standards for determining when such advance notice is required. Under section 803(8) of the Dodd-Frank Act, a "Supervisory Agency" means the federal agency that has primary jurisdiction over a designated FMU under federal banking, securities, or commodity futures laws.[5]

II. Explanation of Proposed Rules

A. Authority, Purpose, and Scope

Proposed § 234.1(a) clarifies that sections 805, 806, and 810 of the Dodd-Frank Act provide the statutory authority for the Board to promulgate the proposed part. Proposed § 234.1(b) explains that the proposed rules include risk-management standards for designated FMUs and that this part does not apply to designated clearing entities governed by the risk-management standards promulgated by the CFTC or the SEC, as appropriate. Proposed § 234.1(b) also clarifies that the requirements and procedures in this part for a designated FMU that proposes to make a change to its rules, procedures, or operations that could materially affect the nature or level of risks presented by the designated FMU apply only to designated FMUs for which the Board is the Supervisory Agency.

B. Definitions

The proposed rule includes definitions that are necessary to implement the rules. Several definitions (including "designated financial market

[1] The Dodd-Frank Act, Public Law 111–203, 124 Stat. 1376, was signed into law on July 21, 2010.

[2] For these purposes, section 803(9) of the Dodd-Frank Act defines "systemically important" as a situation in which the failure of or a disruption to the functioning of an FMU could create, or increase, the risk of significant liquidity or credit problems spreading among financial institutions or markets and thereby threaten the stability of the financial system of the United States. 12 U.S.C. 5462(9). The Council issued an advance notice of proposed rulemaking on the criteria for FMU designations on November 23, 2010 (*see* 75 FR 79982 (Dec. 21, 2010)).

[3] Dodd-Frank Act section 805(a)(2) 12 U.S.C. 5464(a)(2).

[4] Section 805(a)(2) similarly requires the CFTC and SEC to take into consideration relevant international standards and existing prudential requirements when prescribing regulations containing risk-management standards for designated clearing entities.

[5] A Supervisory Agency includes the SEC and CFTC with respect to their respective designated clearing entities (as defined above), the appropriate federal banking agencies with respect to FMUs that are institutions described in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)), and the Board with respect to a designated FMU this is otherwise not subject to the jurisdiction of any of the agencies listed above.

utility," "financial market utility," and "Supervisory Agency") reference the statutory language in section 803 of the Dodd-Frank Act. Other proposed definitions (including "central counterparty," "central securities depository," and "payment system") are based on similar terms used in the risk-management standards issued by the Committee on Payment and Settlement Systems (the "CPSS") and the Technical Committee of the International Organization of Securities Commissions ("IOSCO"), which are discussed in detail below. The Board is requesting comment on all aspects of the proposed definitions except those defined in the Dodd-Frank Act. In particular, the Board requests comment on whether the definitions are clear and sufficiently detailed and whether additional definitions are needed to implement the proposed rules.

C. Risk-Management Standards for Designated FMUs

As noted above, in prescribing risk-management standards for designated FMUs, section 805(a) of the Dodd-Frank Act directs the Board to take into consideration relevant international standards and existing prudential requirements. The current international standards most relevant to risk management of FMUs are the standards developed by the CPSS and IOSCO.[6] In 2001, the CPSS published a set of principles for the design and operation of systemically important payment systems (the "Core Principles"). That same year the CPSS and IOSCO jointly issued a set of minimum standards for securities settlement systems (the "Recommendations for Securities Settlement Systems"). In 2004, the CPSS and IOSCO jointly published recommendations for the risk management of central counterparties (the "Recommendations for Central Counterparties," and collectively with the Recommendations for Securities Settlement Systems, the "CPSS–IOSCO Recommendations"). The Board has adopted the three sets of standards in its Policy on Payment System Risk ("PSR policy"). Furthermore, the Board has been guided by this policy, in conjunction with relevant laws and other Federal Reserve policies, when exercising its authority in (1) supervising state member banks, Edge and agreement corporations, bank holding companies, and clearinghouse arrangements, including the exercise of authority under the Bank Service Company Act, where applicable; (2) setting or reviewing the terms and conditions for use of Federal Reserve payment and settlement services by system operators and participants; (3) developing and applying policies for the provision of intraday credit to Reserve Bank account holders; and (4) interacting with other domestic and foreign financial system authorities on payments and settlement risk issues.[7] Thus, the Board has had several years experience with interpreting and applying the three sets of standards to payment, clearing, and settlement systems.

The Board believes that the Core Principles and the CPSS–IOSCO Recommendations further the objectives and principles for designated FMU standards set out in section 805(b) of the Dodd-Frank Act. These international standards were formulated by central banks and securities regulators to promote sound risk-management practices, encourage the safe design and operation of relevant FMUs, reduce systemic risk, and, in certain instances, improve selected market practices or actions by regulators. The Federal Reserve collaborated with participating financial system authorities in developing the three sets of standards. In addition, the SEC and CFTC participated in the development of the CPSS–IOSCO Recommendations. The Core Principles and Recommendations for Securities Settlement Systems are also part of the Financial Stability Board's Compendium of Standards, which has been widely recognized, supported, and endorsed by U.S. authorities as integral to strengthening the stability of the financial system. Furthermore, while the Recommendations for Central Counterparties have not been recognized formally by the Financial Stability Board, they are widely accepted and applied by central banks and market regulators around the world. The Board, therefore, believes that the Core Principles and CPSS–IOSCO Recommendations are an appropriate basis for risk-management standards for designated FMUs, and the Board is proposing to adopt by regulation a set of standards based on the Core Principles and CPSS–IOSCO Recommendations to implement section 805(a) of the Dodd-Frank Act.

The Board believes, however, that it should adopt a modified version of the standards for the purpose of section 805(a). In particular, the Board is proposing to adopt by regulation only those Core Principles and CPSS–IOSCO Recommendations, or portions thereof, that directly apply to an FMU's risk-management or operational framework, rather than those standards that apply more generally to financial markets (for example, market convention, pre-settlement activities) or regulators (for example, regulation and oversight). The Board acknowledges that the scope of the standards is broad. For example, the Core Principles and the CPSS–IOSCO Recommendations contain a standard requiring a clear and well founded legal framework, which includes legislation and administrative rulemaking. While the Board acknowledges that an FMU cannot control or dictate legislation or regulatory rulemaking, it expects that a designated FMU will manage its legal risk within the context of current applicable statutes and regulations, in ways such as ensuring that its rules, procedures, and contractual provisions are clear and accessible to participants and such rules, procedures, and contractual provisions will be enforceable with a high degree of certainty. In order to facilitate compliance, designated FMUs may refer to the CPSS and CPSS–IOSCO documents for background.

The Board expects to interpret and apply the proposed standards consistent with its interpretation and application of those standards under its existing PSR policy. For instance, when considering the adequacy of risk controls or the sufficiency of financial resources that a payment system, central securities depository, or central counterparty would require to complete timely settlement in the event the participant with the largest settlement obligation is unable to complete settlement, the Board usually has interpreted the term "participant" to mean the largest family of affiliated participants where there is more than one affiliated participant.[8] Furthermore, the Board would continue to expect a central securities depository that extends intraday credit to its participants to institute risk controls that cover fully its credit risk exposure to all participants, not only the participant with the largest payment

[6] *See* full reports for the Core Principles for Systemically Important Payment Systems (Core Principles) (*http://www.bis.org/publ/cpss43.htm*) and the CPSS–IOSCO Recommendations for Securities Settlement Systems (Recommendations for Securities Settlement Systems) (*http://www.bis.org/publ/cpss46.htm*) and Central Counterparties (*http://www.bis.org/publ/cpss64.htm*) (Recommendations for Central Counterparties).

[7] *See* the full PSR policy at *http://www.federalreserve.gov/paymentsystems/psr_policy.htm*. The Board requested comment on these standards prior to adopting them as part of its PSR policy. *See* 71 FR 36800 (June 28, 2006) and 72 FR 2518 (Jan. 19, 2007).

[8] See, for example, proposed standards in §§ 234.3(a)(5) and 234.4(a)(18).

obligation.[9] In addition, the Board would expect a designated FMU to meet the sound practices set forth in the "Interagency Paper on Sound Practices to Strengthen the Resilience of the U.S. Financial System" as one element of complying with the risk-management standards in proposed §§ 234.3(a)(7) and 234.4(a)(4).[10] Specifically, a designated FMU should develop the capacity to recover and resume its payment, clearing, and settlement activities within the business day on which the disruption occurs with the overall goal of achieving recovery and resumption within two hours after an event.[11] The Board requests comment on whether these provisions need further definition in the text of the proposed standards.

The Board believes that the adoption of risk-management standards under Title VIII that are based on the current international standards will have several important benefits, including easing the potential burden for designated FMUs to comply with the standards; reducing potential conflicts among regulators regarding prudential requirements; providing a common framework among relevant regulators for overseeing and assessing the risks and risk management of FMUs with cross-market, cross-border, or cross-currency operations; aiding international efforts to strengthen the risk management of critical FMUs; and reducing systemic risk.

The Board requests comment on the set of standards set out in the proposed rule and the use of CPSS and CPSS–IOSCO documents as further information. In particular, given the familiarity of most FMUs with the existing relevant international standards, the Board requests comment on whether the proposed standards provide sufficient guidance for designated FMUs to comply with the standards pursuant to Title VIII of the Dodd-Frank Act.

The CPSS and IOSCO are currently reviewing the three sets of international standards. This review is intended to strengthen and clarify the standards based on experience with the Core Principles and CPSS–IOSCO Recommendations since their publication and to incorporate lessons learned during the recent financial crisis. The CPSS and IOSCO published a consultative report on March 10, 2011; final international standards are expected in early 2012.[12] At that time, the Board anticipates that it will review the new standards, consult with other appropriate agencies and the Council, and likely seek public comment on the adoption of revised standards for designated FMUs under section 805(a) of the Dodd-Frank Act based on the new international standards.

Payment systems. Proposed § 234.3(a) sets out risk-management standards for designated FMUs that operate as payment systems, in accordance with section 805(a) of the Dodd-Frank Act. The Board is proposing a set of standards based on the Core Principles for such designated FMUs. The Core Principles are widely accepted by the international regulatory community, and numerous payment systems around the world already follow them. These standards address the types of areas of supervisory concern for designated FMUs set out in section 805(c) of the Dodd-Frank Act. For example, the standards address risk-management policies and procedures, participant default policies and procedures, and the ability to complete timely settlement of payments.

Proposed § 234.3(b) clarifies that the Board will apply the standards set out in proposed § 234.3(a) in its supervision of designated FMUs that operate as payment systems and for which the Board is the Supervisory Agency. All designated FMUs are expected to employ a risk-management framework that is appropriate for their risks, so the Board may require a particular designated FMU to exceed the standards set out in the proposed rules in this notice. To that end, § 234.3(b) states that the Board may, by order, apply heightened risk-management standards to a particular FMU in response to the risks presented by that FMU.

The Board requests comment on all aspects of the appropriateness of the proposed standards for designated FMUs that are payment systems, including whether there are any areas of supervisory concern regarding a payment system's operations that are not sufficiently addressed by the proposed rules. The Board also requests comment on whether the proposed standards achieve the statutory objectives outlined above to (1) promote robust risk management, (2) promote safety and soundness, (3) reduce systemic risks, and (4) support the stability of the broader financial system.

Central securities depositories and central counterparties. Proposed § 234.4(a) of the proposed rule sets out risk-management standards for designated FMUs that operate as central securities depositories or central counterparties, in accordance with section 805(a) of the Dodd-Frank Act. Each proposed standard states whether it is applicable to a central securities depository, a central counterparty, or both.

Most designated FMUs that operate as central securities depositories or central counterparties will be designated clearing entities subject to the risk-management standards promulgated by the CFTC or SEC. The Board is proposing standards for designated FMUs that operate as central securities depositories, central counterparties, or both, to address the unlikely event that a designated FMU operates as a central securities depository or central counterparty and is not required to be registered as a clearing agency or derivatives clearing organization with the SEC or CFTC, respectively. Pursuant to section 805(a)(1) of the Dodd-Frank Act, the Board's risk-management standards apply to any designated FMU that is otherwise not subject to the jurisdiction of the SEC or the CFTC.[13]

The Board is proposing a set of standards for such designated FMUs that is based on the majority of the CPSS–IOSCO Recommendations presented in a modified format. Specifically, the Board is proposing to prescribe only those portions of the CPSS–IOSCO Recommendations that apply directly to FMUs, rather than those portions that apply to market convention, pre-settlement activities, and regulation and oversight, which are outside the control of the individual FMUs and are more appropriately addressed by other entities.[14] While the Board endorses the CPSS–IOSCO

[9] *See* proposed standard in § 234.4(a)(15).

[10] The interagency paper is available at *http://www.federalreserve.gov/boarddocs/SRLETTERS/2003/SR0309a1.pdf.*

[11] This interpretation is consistent with the Board's supervision of banking organizations that are core clearing and settlement organizations or act as large-value payment system operators. *See* Supervision and Regulation letter 03–9 (May 28, 2003) at *http://www.federalreserve.gov/boarddocs/srletters/2003/sr0309.htm.*

[12] *See* consultative report for Principles for Financial Market Infrastructures at *http://www.bis.org/publ/cpss94.htm.*

[13] 12 U.S.C. 5464(a)(1).

[14] The Board is not proposing to include the following CPSS–IOSCO Recommendations as risk-management standards for designated FMUs: Recommendations 2 (trade confirmation), 3 (settlement cycles), 4 (central counterparties), 5 (securities lending), 12 (protection of customers' securities), and 18 (regulation and oversight) of the Recommendations for Securities Settlement Systems and recommendation 15 (regulation and oversight) in the Recommendations for Central Counterparties. In addition, the Board is not proposing to prescribe a rule to adopt Recommendation 16 in the Recommendations for Securities Settlement Systems (communication procedures and standards) because the Board believes that at this time the purpose of this recommendation is sufficiently captured in the proposed risk-management standard regarding the efficient operation of a central securities depository.

Recommendations in their entirety as a policy matter, its primary interest for purposes of this rulemaking is in those recommendations related to the clearing and settlement aspects of financial transactions, including the delivery of securities or other financial instruments against payment, and related risks. In addition, the standards in the Recommendations for Securities Settlement Systems and the Recommendations for Central Counterparties that overlap significantly have been consolidated to avoid repetition.

Finally, the Board has modified the margin-related standards set forth in the Recommendations for Central Counterparties by adding two components on testing set forth in proposed § 234.4(a)(17). The components added by the Board are consistent with the frequencies recommended in the explanatory text of the Recommendations for Central Counterparties; however, proposed § 234.4(a)(17)(i) would introduce more specific parameters on who may conduct model validations for central counterparties.[15] In conducting supervision of central counterparties, the Board typically has required systems to employ a qualified, independent party to conduct validations of proposed and existing models to evaluate the performance of the model, along with parameters and assumptions, in a range of scenarios. The Board believes that in order for the validator to offer independent, unbiased conclusions and recommendations, the model validation should be performed by a person who is not responsible for developing the margin model and does not report to a person who performs these functions. A central counterparty's margin model is a critical component in its risk-management framework and should be tested rigorously and validated at least annually to ensure it is performing reliably and achieving the desired coverage. The Board requests comment on whether the proposed rule for model validation is sufficiently clear. The Board also requests comment on all aspects of the proposed rule, including the proposed frequency and whether a model validation should be triggered as a result of any material change to a central counterparty, such as revisions to the margin model, introduction of new products, or formation of new margining arrangements (for example, portfolio or cross-margining).

The Board believes that the standards in proposed § 234.4(a) appropriately address the types of areas of supervisory concern set out in section 805(c) of the Dodd-Frank Act. For example, the standards address collateral requirements and the ability to complete timely clearing and settlement of financial transactions for central securities depositories, and margin requirements and counterparty default policies and procedures for central counterparties.

Proposed § 234.4(b) clarifies that the Board will apply the standards in proposed § 234.4(a) in its supervision of designated FMUs that operate as a central securities depository or a central counterparty and for which the Board is the Supervisory Agency. A designated FMU should comply with the standards that are applicable to it as determined by its function as a central securities depository, a central counterparty, or both. In addition, proposed § 234.4(b) states that the Board may, by order, apply heightened risk-management standards to a particular FMU in response to the risks presented by that FMU, for the same reasons as discussed above regarding heightened standards for designated FMUs operating as payment systems.

The Board requests comment on all aspects of the proposed standards for designated FMUs that act as central securities depositories or central counterparties, including whether there are any areas of supervisory concern regarding the operations of a central securities depository or a central counterparty that are not sufficiently addressed by the proposed rules. The Board also requests comment on whether these standards achieve the statutory objectives outlined above to (1) promote robust risk management, (2) promote safety and soundness, (3) reduce systemic risks, and (4) support the stability of the broader financial system.

The Board also requests comment on all aspects of proposed rules in §§ 234.3 and 234.4, but, in particular, the Board requests comment on the following specific issues:

- Under §§ 234.3(a)(5), 234.4(a)(2), 234.4(a)(15), and 234.4(a)(18), should the Board require designated FMUs to maintain sufficient financial resources to withstand the default by the participant with the largest exposure or obligation in extreme but plausible market conditions, where participant means the family of affiliated participants where there is more than one affiliated participant ("cover one"); or should the Board require sufficient financial resources to withstand defaults by the two participants, plus any affiliated participants, with the largest exposures or obligations in extreme but plausible market conditions ("cover two")? Should the Board require that financial resource requirements be different for certain types of designated FMUs in the same category, such as central counterparties, depending on the risk and other characteristics of the particular products that it clears or settles? What competitive impacts, if any, should the Board consider?
- How would a cover two requirement compare with the current practices of payment, clearing, and settlement systems? What would be the expected incremental financial resource costs, separately including incremental liquidity costs on the system, and its participants, in connection with potentially increasing the current cover one requirement to a cover two requirement?

D. Material Changes to Rules, Procedures, or Operations Requiring Advanced Notice

As noted above, section 806(e)(1) of the Dodd-Frank Act requires a designated FMU to provide 60 days' advance notice to its Supervisory Agency of any changes to its rules, procedures, or operations that "materially affect the nature or level of risks presented." Section 806(e) further requires each Supervisory Agency to describe in a rule what changes are considered material and thus would require advance notice by the designated FMU. The Board is currently evaluating the manner in which these types of advance notice should be submitted. The Board will provide guidance at a future date regarding the advance notice submission procedures.

Proposed § 234.5(a) requires designated FMUs for which the Board is the Supervisory Agency to provide the Board with 60 days' advance notice of any proposed change to its rules, procedures, or operations that could materially affect the nature or level of risks presented by the designated FMU. The proposed rule includes procedural requirements regarding such notices, such as the required contents of the notices and the procedures and timing for the methods for approving such changes. These provisions of the proposed rules essentially reiterate

[15] Proposed § 234.4(a)(17)(i)—(ii) are generally consistent with Recommendations 4 and 5 in the Recommendations for Central Counterparties. Proposed rule 234.4.(17)(i) is based on Recommendation 5 (financial resources), paragraph 4.5.4, that recommends that a central counterparty conduct comprehensive stress tests involving a full validation of model parameters and assumptions at least annually. Proposed § 234.4(17)(ii) is based on Recommendation 4 (margin requirements), paragraph 4.4.2, that states that margin models and parameters should be reviewed and backtested regularly (at least quarterly) to assess the reliability of the methodology in achieving the desired coverage.

similar provisions in section 806(e) of the Dodd-Frank Act.

As required by section 806(e), the Board is proposing to define under § 234.5(c) changes that "materially affect the nature or level of risks presented" as those that could be reasonably expected to affect the performance of payment, clearing, or settlement functions or the overall nature or level of risk (including credit, liquidity, settlement, legal, or operational risks) presented by the designated FMU. Under this proposed definition, material changes would generally include changes that may affect the designated FMU's ability or approach to measure or manage the risks posed by or to itself. Material changes also include changes to the designated FMU's design that not only affect the FMU and its direct participants, but, even when properly implemented, could also affect the financial system more broadly. For example, given the operational and risk interdependencies of a designated FMU, it is possible that attempts to reduce or limit one type of risk could lead to the concentration or creation of different risks. Material changes, therefore, are not limited to those changes that would adversely affect or increase the risks of the FMU, and include those that may transfer or transform risks.

To assist designated FMUs in determining whether a proposed change is material, the Board's proposed rule sets out a non-exclusive list of changes that would be considered material and require advance notice to the Board. Under the proposed rule, material changes would include, but not be limited to, changes that affect participant eligibility or access criteria; product eligibility; risk management; settlement failure or default procedures; financial resources; business continuity and disaster recovery plans; daily or intraday settlement procedures; the scope of services, including the addition of a new service or discontinuation of an existing service; technical design or operating platform, which result in nonroutine changes to the underlying technological framework for payment, clearing, or settlement functions; or governance.

The proposed rule also includes a non-exclusive list of routine changes to a designated FMU's rules, procedures, or operations that will not be deemed to materially affect an FMU's nature or level of risks or impact or cause disruption to the financial system more broadly. The Board believes the relevant safety and soundness issues associated with these routine changes are more appropriately addressed through ongoing communications with the designated FMU rather than through the formal advance notice process under section 806(e) of the Dodd-Frank Act. For the purposes of the advance notice provision, changes that would not be deemed to materially affect the FMU's risks include, but are not limited to, changes to an existing rule, procedure, or operation that do not modify the contractual rights or obligations of the designated FMU or persons using its payment, clearing, or settlement services; changes to an existing procedure, control, or service that do not adversely affect the safeguarding of securities, collateral, or funds in the custody or control of the designated FMU or for which it is responsible; routine technology systems upgrades; changes related solely to the administration of the designated FMU or related to the routine, daily administration, direction, and control of employees; or clerical changes and other nonsubstantive revisions to rules, procedures, or other documentation.

The material and nonmaterial lists are not exhaustive regarding the types of changes that the Board may deem material under section 806(e). There would be many proposed changes to a designated FMU's rules, procedures, or operations that are not included in either list. If a designated FMU had any question regarding whether a particular change to a rule, procedure, or operation, which was not covered by either list, met the general materiality standard, the Board anticipates that the FMU would contact Board staff.

The Board requests comment on all aspects of the proposed rule regarding changes to rule, procedures, or operations of a designated FMU. The Board requests comment on whether the proposed rule's provisions regarding the requirements, content, and timing of advance notices of proposed changes are clear. In addition, the Board requests comment on whether the proposed non-exclusive illustrative lists for material and nonmaterial changes to an FMU's rules, procedures, or operations would be helpful to designated FMUs in determining whether advance notice of such changes is required. The Board also requests comment on whether there are any areas or items on either list that should be deleted as inappropriate. Finally, the Board requests comment on whether there are other areas or items that appropriately should be added to either list as material or not material to an FMU's risks. In responding to these questions, commenters are requested to explain why they believe an item or area on either list should be deleted or added.

III. Administrative Law Matters

A. Regulatory Flexibility Act Analysis

Congress enacted the Regulatory Flexibility Act (the "RFA") (5 U.S.C. 601 *et seq.*) to address concerns related to the effects of agency rules on small entities, and the Board is sensitive to the impact its rules may impose on small entities. The RFA requires agencies either to provide an initial regulatory flexibility analysis with a proposed rule or to certify that the proposed rule will not have a significant economic impact on a substantial number of small entities. In accordance with section 3(a) of the RFA, the Board has reviewed the proposed regulation. In this case, the proposed rule would apply to FMUs that are identified and designated by the Council as systemically important to the U.S. financial system. Based on current information, the Board believes that the payment system FMUs that would likely be designated by the Council would not be "small entities" for purposes of the RFA, and so, the proposed rule likely would not have a significant economic impact on a substantial number of small entities (5 U.S.C. 605(b)). The authority to designate systemically important FMUs, however, resides with the Council, rather than the Board, and the Board cannot therefore be assured of the identity of the FMUs that the Council may designate in the future. Accordingly, an Initial Regulatory Flexibility Analysis has been prepared in accordance with 5 U.S.C. 603, based on current information. The Board will, if necessary, conduct a final regulatory flexibility analysis after consideration of comments received during the public comment period.

1. *Statement of the need for, objectives of, and legal basis for, the proposed rule.* The Board is proposing a regulation to implement certain provisions of Title VIII of the Dodd-Frank Act. Section 805(a)(1)(A) of the Dodd-Frank Act requires the Board to promulgate risk-management standards governing the operations related to the payment, clearing, and settlement activities of designated FMUs. The proposed rule clarifies that the Board would apply the standards set out in the proposed rule to designated FMUs for which the Board is the Supervisory Agency. In addition, under section 806(e) of the Dodd-Frank Act, the Board is required to prescribe regulations setting forth the standards for determining when advance notice is required to be provided by a designated FMU for which the Board is the Supervisory Agency that proposes to change its rules, procedures, or operations that could materially affect

the nature or level of risks presented by the designated FMU. The Board believes that the proposed regulation implements Congress's requirement that the Board prescribe regulations that carry out the purposes of Title VIII of the Dodd-Frank Act.

2. *Small entities affected by the proposed rule.* The proposed rule would affect FMUs that the Council designates as systemically important to the U.S. financial system. The Board estimates that fewer than five large-value payment systems would meet these conditions and be affected by this proposed rule. Pursuant to regulations issued by the Small Business Administration (the "SBA") (13 CFR 121.201), a "small entity" includes an establishment engaged in providing financial transaction processing, reserve and liquidity services, or clearinghouse services with an average revenue of $7 million or less (NAICS code 522320). Based on current information, the Board does not believe that any of the payment systems that would likely be designated by the Council would be "small entities" pursuant to the SBA regulation. The Board does not at this time believe that, pursuant to section 803(8) of the Dodd-Frank Act, it would be the Supervisory Agency for any FMU that operates as a central securities depository or a central counterparty and that would likely be designated by the Council. The Board seeks information and comment on the number of small entities to which the proposed rule would apply.

3. *Projected reporting, recordkeeping, and other compliance requirements.* The proposed rule imposes certain reporting and recordkeeping requirements for a designated FMU. (See, for example, § 234.3(a)(3) of the proposed rule (requiring clearly defined procedures for the management of credit risks and liquidity risks), §§ 234.5(a)(1) and (2) of the proposed rule (requiring advance notice of changes that could materially affect the nature or level of risks presented by the designated FMU), and §§ 234.5(a)(2) and (3) of the proposed rule (requiring notice of an emergency change implemented by a designated FMU).) The proposed rule also contains a number of compliance requirements, including the standards that the designated FMU must meet, such as having a well-founded legal basis under all relevant jurisdictions and having rules and procedures that enable participants to understand clearly the FMU's impact on each of the financial risks they incur by participation in it. Payment systems under the Board's jurisdiction (including certain payment systems the Board believes could be designated as systemically important) generally already have implemented these standards, so the proposed rule would not likely impose additional costs on those payment systems. The Board seeks information and comment on any costs, compliance requirements, or changes in operating procedures that would arise from the application of the proposed rule.

4. *Identification of duplicative, overlapping, or conflicting Federal rules.* The Board does not believe that any Federal rules conflict with the proposed rule. There is an overlap between the risk-management standards for FMUs in the proposed rule and the Board's PSR policy; however, the proposed standards are consistent with the PSR policy. The Board seeks comment regarding any statutes or regulations that would duplicate, overlap, or conflict with the proposed rule.

5. *Significant alternatives to the proposed rule.* The Board is unaware of any significant alternatives to the proposed rule that accomplish the stated objectives of the Dodd-Frank Act and that minimize any significant economic impact of the proposed rule on small entities. FMUs that are designated as systemically important by the Council and present similar risk profiles should be held to consistent standards. Promoting uniform standards for designated FMUs is one of the stated purposes of Title VIII of the Dodd-Frank Act.[16] The standards in the proposed rule are being proposed for adoption in part because the payment systems that would likely be designated by the Council are already familiar with the international standards and could implement them with relatively less burden than if the Board adopted a wholly new and unfamiliar set of standards at this time. Similarly, the standards in the proposed rule for central securities depositories and central counterparties are a consolidated and streamlined compilation. They are based on the CPSS–IOSCO Recommendations, and most central securities depositories and central counterparties are already familiar with them. The Board requests comment on whether there are additional ways to reduce regulatory burden on small entities associated with this proposed rule.

B. Paperwork Reduction Act Analysis

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320, Appendix A.1), the Board reviewed the proposed rule under the authority delegated to the Board by the Office of Management and Budget. For purposes of calculating burden under the Paperwork Reduction Act, a "collection of information" involves 10 or more respondents. Any collection of information addressed to all or a substantial majority of an industry is presumed to involve 10 or more respondents (5 CFR 1320.3(c), 1320.3(c)(4)(ii)). The Board estimates there are fewer than 10 respondents, and these respondents do not represent all or a substantial majority of the participants in payment, clearing, and settlement systems. Therefore, no collections of information pursuant to the Paperwork Reduction Act are contained in the proposed rule.

IV. Statutory Authority

Pursuant to the authority in Title VIII of the Dodd-Frank Act, particularly sections 805(a) and 806(e) (12 U.S.C. 5464(a) and 5465(e)), the Board proposes to adopt part 234 to govern designated financial market utilities (Regulation HH).

V. Text of Proposed Rules

List of Subjects in 12 CFR Part 234

Banks, Banking, Credit, Electronic funds transfers, Financial market utilities, Securities.

Authority and Issuance

For the reasons set forth in the preamble, the Board proposes to amend 12 CFR, Chapter II by adding part 234 as set forth below.

PART 234—DESIGNATED FINANCIAL MARKET UTILITIES (REGULATION HH)

Sec.

Authority: 12 U.S.C. 5461 *et seq.*

§ 234.1 Authority, purpose, and scope.

(a) *Authority.* This part is issued under the authority of sections 805, 806, and 810 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) (Pub. L. 111–203, 124 Stat. 1376; 12 U.S.C. 5464, 5465, and 5469).

(b) *Purpose and scope.* This part establishes risk-management standards governing the operations related to the payment, clearing, and settlement activities of designated financial market utilities. The risk-management standards do not apply, however, to a designated financial market utility that

[16] *See* 12 U.S.C. 5461(b)(1)(A).

is a derivatives clearing organization registered under section 5b of the Commodity Exchange Act (7 U.S.C. 7a–1) or a clearing agency registered with the Securities and Exchange Commission under section 17A of the Securities Exchange Act of 1934 (15 U.S.C. 78q–1), which are governed by the risk-management standards promulgated by the Commodity Futures Trading Commission or the Securities and Exchange Commission, respectively, for which each is the Supervisory Agency (as defined in § 234.2). In addition, this part sets out requirements and procedures for a designated financial market utility that proposes to make a change to its rules, procedures, or operations that could materially affect the nature or level of risks presented by the designated financial market utility and for which the Board is the Supervisory Agency.

§ 234.2 Definitions.

(a) *Central counterparty* means a designated financial market utility that interposes itself between the counterparties to trades, acting as the buyer to every seller and the seller to every buyer.

(b) *Central securities depository* means a designated financial market utility that holds securities in custody to enable securities transactions to be processed by means of book entries or a designated financial market utility that enables securities to be transferred and settled by book entry either free of or against payment.

(c) *Designated financial market utility* means a financial market utility (as defined in paragraph (d) of this section) that the Financial Stability Oversight Council has designated as systemically important under section 804 of the Dodd-Frank Act (12 U.S.C. 5463).

(d) *Financial market utility* has the same meaning as the term is defined in section 803(6) of the Dodd-Frank Act (12 U.S.C. 5462(6)).

(e) *Payment system* means a designated financial market utility that consists of a set of payment instructions, procedures, and rules for the transfer of funds among system participants.

(f) *Supervisory Agency* has the same meaning as the term is defined in section 803(8) of the Dodd-Frank Act (12 U.S.C. 5462(8)).

§ 234.3 Standards for payment systems.

(a) A designated financial market utility that operates as a payment system should meet or exceed the following risk-management standards with respect to its payment, clearing, and settlement activities:

(1) The payment system should have a well-founded legal basis under all relevant jurisdictions.

(2) The payment system's rules and procedures should enable participants to have a clear understanding of the payment system's impact on each of the financial risks they incur through participation in it.

(3) The payment system should have clearly defined procedures for the management of credit risks and liquidity risks, which specify the respective responsibilities of the payment system operator and the participants and which provide appropriate incentives to manage and contain those risks.

(4) The payment system should provide prompt final settlement on the day of value, preferably during the day and at a minimum at the end of the day.

(5) A payment system in which multilateral netting takes place should, at a minimum, be capable of ensuring the timely completion of daily settlements in the event of an inability to settle by the participant with the largest single settlement obligation.

(6) Assets used for settlement should preferably be a claim on the central bank; where other assets are used, they should carry little or no credit risk and little or no liquidity risk.

(7) The payment system should ensure a high degree of security and operational reliability and should have contingency arrangements for timely completion of daily processing.

(8) The payment system should provide a means of making payments that is practical for its users and efficient for the economy.

(9) The payment system should have objective and publicly disclosed criteria for participation, which permit fair and open access.

(10) The payment system's governance arrangements should be effective, accountable, and transparent.

(b) Designated financial market utilities that operate as payment systems and for which the Board is the Supervisory Agency must meet or exceed the risk-management standards in § 234.3(a). The Board, by order, may apply heightened risk-management standards to an individual designated financial market utility in accordance with the risks presented by the designated financial market utility.

§ 234.4 Standards for central securities depositories and central counterparties.

(a) A designated financial market utility that operates as a central securities depository or a central counterparty should meet or exceed the following risk-management standards with respect to its payment, clearing, and settlement activities:

(1) The central securities depository or central counterparty should have a well-founded, transparent, and enforceable legal framework for each aspect of its activities in all relevant jurisdictions.

(2) The central securities depository or central counterparty should require participants to have sufficient financial resources and robust operational capacity to meet obligations arising from participation in the central securities depository or central counterparty. The central securities depository or central counterparty should have procedures in place to monitor that participation requirements are met on an ongoing basis. The central securities depository's or central counterparty's participation requirements should be objective and publicly disclosed, and permit fair and open access.

(3) The central securities depository or central counterparty should hold assets in a manner whereby risk of loss or of delay in its access to them is minimized. Assets invested by a central securities depository or central counterparty should be held in instruments with minimal credit, market, and liquidity risks.

(4) The central securities depository or central counterparty should identify sources of operational risk and minimize them through the development of appropriate systems, controls, and procedures; have systems that are reliable and secure, and have adequate, scalable capacity; and have business continuity plans that allow for timely recovery of operations and fulfillment of the central securities depository's or central counterparty's obligations.

(5) The central securities depository or central counterparty should employ money settlement arrangements that eliminate or strictly limit its settlement bank risks, that is, its credit and liquidity risks from the use of banks to effect money settlements with its participants and should require funds transfers to the central securities depository or central counterparty be final when effected.

(6) The central securities depository or central counterparty should be cost-effective in meeting the requirements of participants while maintaining safe and secure operations.

(7) The central securities depository or central counterparty should evaluate the potential sources of risks that can arise when the central securities depository or central counterparty establishes links either cross-border or domestically to settle transactions or

clear trades, and ensure that the risks are managed prudently on an ongoing basis.

(8) The central securities depository or central counterparty should have governance arrangements that are clear and transparent to fulfill public interest requirements and to support the objectives of owners and participants and should promote the effectiveness of a central securities depository's or central counterparty's risk-management procedures.

(9) The central securities depository or central counterparty should provide market participants with sufficient information for them to identify and evaluate accurately the risks and costs associated with using its services.

(10) The central securities depository or central counterparty should establish default procedures that ensure that the central securities depository or central counterparty can take timely action to contain losses and liquidity pressures and to continue meeting its obligations and should provide for key aspects of the default procedures to be publicly available.

(11) The central securities depository or central counterparty should ensure that final settlement occurs no later than the end of the settlement day and should require that intraday or real-time finality be provided where necessary to reduce risks.

(12) The central securities depository or central counterparty should eliminate principal risk by linking securities transfers to funds transfers in a way that achieves delivery versus payment.

(13) The central securities depository or central counterparty should state its obligations with respect to physical deliveries, and the risks from these obligations should be identified and managed.

(14) The central securities depository should immobilize or dematerialize securities certificates and transfer them by book entry to the greatest extent possible.

(15) The central securities depository should institute risk controls that include collateral requirements and limits, and ensure timely settlement in the event that the participant with the largest payment obligation is unable to settle when the central securities depository extends intraday credit.

(16) The central counterparty should measure its credit exposures to its participants at least once a day and limit its exposures to potential losses from defaults by its participants in normal market conditions so that the operations of the central counterparty would not be disrupted and non-defaulting participants would not be exposed to losses that they cannot anticipate or control.

(17) The central counterparty should use margin requirements to limit its credit exposures to participants in normal market conditions and use risk-based models and parameters to set margin requirements and review them regularly. Specifically, the central counterparty should—

(i) Provide for annual model validation consisting of evaluating the performance of the clearing agency's margin models and the related parameters and assumptions associated with such models by a qualified person who does not perform functions associated with the clearing agency's margin models (except as part of the annual model validation) and does not report to such a person.

(ii) Review and backtest margin models and parameters at least quarterly.

(18) The central counterparty should maintain sufficient financial resources to withstand, at a minimum, a default by the participant to which it has the largest exposure in extreme but plausible market conditions.

(b) Designated financial market utilities that operate as central securities depositories or central counterparties and for which the Board is the Supervisory Agency must meet or exceed the risk-management standards in § 234.4(a). The Board, by order, may apply heightened risk-management standards to individual designated financial market utilities in accordance with the risks presented by the designated financial market utility.

§ 234.5 Changes to rules, procedures, or operations.

(a) *Advance notice.*

(1) A designated financial market utility shall provide at least 60-days advance notice to the Board of any proposed change to its rules, procedures, or operations that could materially affect the nature or level of risks presented by the designated financial market utility.

(2) The notice of the proposed change shall describe—

(i) The nature of the change and expected effects on risks to the designated financial market utility, its participants, or the market; and

(ii) How the designated financial market utility plans to manage any identified risks.

(3) The Board may require the designated financial market utility to provide additional information necessary to assess the effect the proposed change would have on the nature or level of risks associated with the utility's payment, clearing, or settlement activities and the sufficiency of any proposed risk-management techniques.

(4) A designated financial market utility shall not implement a change to which the Board has an objection.

(5) The Board will notify the designated financial market utility of any objection within 60 days from the later of—

(i) The date the Board receives the notice of proposed change; or

(ii) The date the Board receives any further information it requests for consideration of the notice.

(6) A designated financial market utility may implement a change if it has not received an objection to the proposed change within 60 days of the later of—

(i) The date the Board receives the notice of proposed change; or

(ii) The date the Board receives any further information it requests for consideration of the notice.

(7) With respect to proposed changes that raise novel or complex issues, the Board may, by written notice during the 60-day review period, extend the review period for an additional 60 days. Any extension under this paragraph will extend the time periods under paragraphs (a)(5) and (a)(6) to 120 days.

(8) A designated financial market utility may implement a proposed change before the expiration of the applicable review period if the Board notifies the designated financial market utility in writing that the Board does not object to the proposed change and authorizes the designated financial market utility to implement the change on an earlier date, subject to any conditions imposed by the Board.

(b) *Emergency changes.*

(1) A designated financial market utility may implement a change that would otherwise require advance notice under this section if it determines that—

(i) An emergency exists; and

(ii) Immediate implementation of the change is necessary for the designated financial market utility to continue to provide its services in a safe and sound manner.

(2) The designated financial market utility shall provide notice of any such emergency change to the Board as soon as practicable and no later than 24 hours after implementation of the change.

(3) In addition to the information required for changes requiring advance notice in paragraph (a)(2) of this section, the notice of an emergency change shall describe:

(i) The nature of the emergency; and

(ii) The reason the change was necessary for the designated financial

market utility to continue to provide its services in a safe and sound manner.

(4) The Board may require modification or rescission of the change if it finds that the change is not consistent with the purposes of the Dodd-Frank Act or any applicable rules, order or standards prescribed under section 805(a) of the Dodd-Frank Act.

(c) *Materiality.*

(1) The term "materially affect the nature or level of risks presented" in paragraph (a)(1) of this section means matters as to which there is a reasonable possibility that the change could materially affect the performance of clearing, settlement, or payment functions or the overall nature or level of risk presented by the designated financial market utility.

(2) A change to rules, procedures, or operations that would materially affect the nature or level of risks presented includes, but is not limited to, changes that affect the following:

(i) Participant eligibility or access criteria;

(ii) Product eligibility;

(iii) Risk management;

(iv) Settlement failure or default procedures;

(v) Financial resources;

(vi) Business continuity and disaster recovery plans;

(vii) Daily or intraday settlement procedures;

(viii) The scope of services, including the addition of a new service or discontinuation of an existing service;

(ix) Technical design or operating platform, which results in non-routine changes to the underlying technological framework for payment, clearing, or settlement functions; or

(x) Governance.

(3) A change to rules, procedures, or operations that does not meet the conditions of paragraph (c)(2) of this section and would not materially affect the nature or level of risks presented includes, but is not limited to the following:

(i) A change that does not modify the contractual rights or obligations of the designated financial market utility or persons using its payment, clearing, or settlement services;

(ii) A change to an existing procedure, control, or service that does not adversely affect the safeguarding of securities, collateral, or funds in the custody or control of the designated financial market utility or for which it is responsible;

(iii) A routine technology systems upgrade;

(iv) A change related solely to the administration of the designated financial market utility or related to the routine, daily administration, direction, and control of employees; or

(v) A clerical change and other non-substantive revisions to rules, procedures, or other documentation.

By order of the Board of Governors of the Federal Reserve System, March 29, 2011.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 2011–7812 Filed 4–1–11; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0318; Directorate Identifier 2010–CE–033–AD]

RIN 2120–AA64

Airworthiness Directives; Burl A. Rogers (Type Certificate Previously Held by William Brad Mitchell and Aeronca, Inc.) Models 15AC and S15AC Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD would require repetitive inspections of the upper and lower main wing spar cap angles for cracks and/or corrosion and installing inspection access panels. This AD would also require replacing the wing spar cap angles if moderate or severe corrosion is found and applying corrosion inhibitor. This proposed AD was prompted by reports of intergranular exfoliation and corrosion of the upper and/or lower wing main spar cap angles found on the affected airplanes. We are proposing this AD to detect and correct cracks, intergranular exfoliation and corrosion in the wing main spar cap angles, which could result in reduced strength of the wing spar and the load carrying capacity of the wing. This could lead to wing failure and consequent loss of control.

DATES: We must receive comments on this proposed AD by May 19, 2011.

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

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

For service information identified in this proposed AD, contact Burl's Aircraft, LLC, P.O. Box 671487, Chugiak, Alaska 99567–1487; phone: (907) 688–3715; fax (907) 688–5031; e-mail *burl@biginalaska.com;* Internet: *http://www.burlac.com.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Eric Wright, Aerospace Engineer, FAA, Anchorage Aircraft Certification Office, 222 W. 7th Ave., #14, Anchorage, Alaska 99513; telephone: (907) 271–2648; fax: (907) 271–6365; e-mail: *eric.wright@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section.

Include "Docket No. FAA–2011–0318; Directorate Identifier 2010–CE–033–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

Since first discovered in 1998, we have received 34 reports of intergranular corrosion and exfoliation found on the upper and lower wing main spar cap angles on Burl A. Rogers Models 15AC and S15AC airplanes. The cause of the corrosion is unknown and does not have a direct correlation to the type, location, or operation performed by the airplane. In the original type design wing skins, there is a lack of access panels, making the main wing spar caps difficult to inspect. If left undetected, the corrosion in the wing main spar caps could become severe enough to reduce the strength of the spar and the load carrying capacity of the wing. This condition, if not corrected, could result in wing failure. This failure could lead to loss of control.

Relevant Service Information

We have reviewed Burl's Aircraft, LLC Mandatory Service Bulletin No. 15AC06–08–10, dated June 8, 2010.

The service information describes procedures for:

- Inspecting the leading and trailing edges of the upper and lower main wing spar cap angles for cracks, intergranular exfoliation, and corrosion;
- Installing wing inspection access panels;
- Applying corrosion inhibitor on the upper and lower spar cap angles; and
- Replacing the main wing spar cap angles if cracks, intergranular exfoliation, or moderate or severe corrosion is found.

Corrosion definitions and limits are contained in FAA Advisory Circular (AC) 43–4A, paragraph 640 (a)(b)(c).

FAA's Determination

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

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in the service information described.

Costs of Compliance

We estimate that this proposed AD would affect 255 airplanes in the U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Initial inspection	10 work-hours × $85 per hour = $850	Not applicable	$850	$216,750
Installation of inspection access panels and inspection.	30 work-hours × $85 per hour = $2,550	$630	3,180	810,900

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

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product per wing
Replacement of main spar cap	80 work-hours × $85 per hour = $6,800 per wing	$1,200 per wing	$8,000

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Burl A. Rogers (Type Certificate Previously Held by William Brad Mitchell and Aeronca, Inc.) Models 15AC and S15AC

Airplanes: Docket No. FAA–2011–0318; Directorate Identifier 2010–CE–033–AD.

Comments Due Date

(a) We must receive comments by May 19, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Burl A. Rogers (type certificate previously held by William Brad Mitchell and Aeronca, Inc.) Model 15AC and S15AC airplanes, all serial numbers, that are certificated in any category.

Subject

(d) Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 57, Wings.

Unsafe Condition

(e) This AD was prompted by reports of intergranular exfoliation and corrosion of the upper and/or lower wing main spar cap angles found on the affected airplanes. We are issuing this AD to detect and correct cracks and corrosion in the wing main spar cap angles, which could result in reduced strength of the wing spar and the load carrying capacity of the wing. This could lead to wing failure and consequent loss of control.

Compliance

(f) Comply with this AD within the compliance times specified, unless already done (does not eliminate the repetitive actions of this AD).

Actions	Compliance	Procedures
(1) Inspect the exposed trailing edges of both the upper and lower main spar cap angles on both the left and right wing for signs of cracks, intergranular exfoliation, and corrosion.	Within the next 10 hours time-in-service (TIS) after the effective date of this AD or 3 months after the effective date of this AD, whichever occurs first; or if the left and/or right wing have been repaired and both the upper and lower main spar caps have been replaced using new parts: Inspect at or before the next annual inspection that occurs 10 years after the replacement or within the next 100 hours TIS after the effective date of this AD, whichever occurs later. This compliance time applies separately to each wing.	Follow Burl's Aircraft, LLC Mandatory Service Bulletin No. 15AC06–08–10, dated June 8, 2010; and FAA Advisory Circular (AC) 43.13–1B, Change 1, Chapter 6. AC 43.13–1B can be found at *http://rgl.faa.gov/.*
(2) After completing the inspection required in paragraph (f)(1) of this AD:		
(i) Install new inspection hole skin reinforcement doublers and the associated screw cover plate in both the left and right wing.	(i) *Install inspection hole skin reinforcement doublers:* Within the next 25 hours TIS after the effective date of this AD or within 6 months after the effective date of this AD, whichever occurs first; or if the left and/or right wing have been repaired and both the upper and lower main spar caps have been replaced using new parts: At or before the next annual inspection that occurs 10 years after the replacement or within the next 100 hours TIS after the effective date of this AD, whichever occurs later. This compliance time applies separately to each wing.	Follow Burl's Aircraft, LLC Mandatory Service Bulletin No. 15AC06–08–10, dated June 8, 2010; Burl's Aircraft, LLC Drawing No. SB 15AC06–08–10 (not dated), and FAA Advisory Circular (AC) 43.13–1B, Change 1, Chapter 6. AC 43.13–1B can be found at *http://rgl.faa.gov/.*
(ii) Through the inspection access panels, inspect the leading and trailing edges of both the upper and lower main spar cap angles on both the left and right wing for signs of cracks, intergranular exfoliation and corrosion; and	(ii) *Inspect:* Before further flight after installing the inspection hole skin reinforcement doublers.	
(iii) Remove any light corrosion and treat the entirety of both the upper and lower main spar cap angles on both the left and right wing with corrosion inhibitor.	(iii) *Remove corrosion and treat with corrosion inhibitor:* Before further flight after the inspection required in paragraph (f)(2)(ii) of this AD.	
(3) If cracks, intergranular exfoliation, or moderate or severe corrosion is found during the inspection required in paragraphs (f)(1) or (f)(2)(ii) of this AD, replace the affected main spar cap angles in their entirety as a single piece. Splicing of the main spar cap angles is not permitted.	Before further flight after the inspection required in paragraphs (f)(1) and (f)(2)(ii) of this AD.	Follow Burl's Aircraft, LLC Mandatory Service Bulletin No. 15AC06–08–10, dated June 8, 2010; and contact Burl's Aircraft, LLC in paragraph (i) of this AD for a replacement scheme and incorporate the replacement scheme
(4) Removing the wing inspection access panels, repetitively inspect both the upper and lower forward main spar caps on both the left and right wing for signs of cracks, intergranular exfoliation, and corrosion.	(i) Repetitively thereafter at intervals not to exceed every 12 months after the inspection required in paragraph (f)(2)(ii) of this AD.	Follow Burl's Aircraft, LLC Mandatory Service Bulletin No. 15AC06–08–10, dated June 8, 2010; and FAA Advisory Circular (AC) 43.13–1B, Change 1, Chapter 6. AC 43.13–1B can be found at *http://rgl.faa.gov/.*
(5) After each inspection required in paragraph (f)(4) of this AD:		

Actions	Compliance	Procedures
(i) If only light corrosion is found, remove the corrosion and treat the main spar cap angles with corrosion inhibitor;.	Before further flight after each inspection required in paragraph (f)(4) of this AD. Continue with the repetitive inspections required in paragraph (f)(4) of this AD.	Follow Burl's Aircraft, LLC Mandatory Service Bulletin No. 15AC06–08–10, dated June 8, 2010; and FAA Advisory Circular (AC) 43.13–1B, Change 1, Chapter 6. AC 43.13–1B can be found at *http://rgl.faa.gov/.* Contact Burl's Aircraft, LLC in paragraph (i) of this AD for a replacement scheme and incorporate the replacement scheme.
(ii) If cracks, intergranular exfoliation, or moderate or severe corrosion is found, replace the affected main spar cap angles in their entirety as a single piece. Splicing of the main spar cap angles is not permitted.		
(6) Only install main spar cap angles that have been inspected and are free of cracks, intergranular exfoliation, or moderate or severe corrosion.	As of the effective date of this AD	Not applicable.

Alternative Methods of Compliance (AMOCs)

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

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

Related Information

(h) For more information about this AD, contact Eric Wright, Aerospace Engineer, FAA, Anchorage ACO, 222 W. 7th Ave., #14, Anchorage, Alaska 99513; telephone: (907) 271–2648; fax: (907) 271–6365; e-mail: *eric.wright@faa.gov.*

(i) For service information identified in this AD, contact Burl's Aircraft, LLC, P.O. Box 671487, Chugiak, Alaska 99567–1487; telephone: (907) 688–3715; fax (907) 688–5031; e-mail *burl@biginalaska.com*; Internet: *http://www.burlac.com.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Issued in Kansas City, Missouri, on March 28, 2011.

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–7878 Filed 4–1–11; 8:45 am]

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DEPARTMENT OF THE INTERIOR

National Indian Gaming Commission

25 CFR Chapter III

Regulatory Review Schedule; Tribal Consultation

AGENCY: National Indian Gaming Commission.

ACTION: Notice of Regulatory Review Schedule.

SUMMARY: On November 18, 2010, the National Indian Gaming Commission (NIGC) issued a Notice of Inquiry and Notice of Consultation advising the public that the NIGC was conducting a comprehensive review of all regulations promulgated to implement the Indian Gaming Regulatory Act (IGRA). The review identified in the Notice of Inquiry and Notice of Consultation was also prepared in order to submit the NIGC's Semi-Annual Regulatory Review to the **Federal Register** in April 2011 as set forth in Executive Order 12866 entitled "Regulatory Planning and Review" and the Regulatory Flexibility Act, 5 U.S.C. 601 *et. seq.* The NIGC held eight consultations during January and February 2011 and invited written comments to be submitted by February 12, 2011. Comments received and transcripts of the consultations are available on the NIGC Web site. The NIGC reviewed all comments received and created this comprehensive regulatory review agenda schedule based on the input received.

DATES: See *Consultation Schedule for Review, Section III* under **SUPPLEMENTARY INFORMATION** below, for a master schedule of dates, locations, and subjects of consultation meetings. See sections IV–VIII under **SUPPLEMENTARY INFORMATION** below for dates and locations of consultations on particular subjects.

ADDRESSES: Testimony and comments sent by electronic mail or delivered by hand are strongly encouraged. Electronic submissions should be directed to *reg.review@nigc.gov.* See *File Formats and Required Information for Submitting Comments* under **SUPPLEMENTARY INFORMATION,** section IIC, below, for instructions. Submissions delivered by hand should be brought to the consultations. See *Consultation Schedule for Review, section III* under **SUPPLEMENTARY INFORMATION** below, for a master schedule of dates, locations, and subjects of consultation meetings. See sections IV–VIII under **SUPPLEMENTARY INFORMATION** below for dates and locations of consultations on particular subjects. Submissions sent by regular mail should be addressed to Lael Echo-Hawk, Counselor to the Chair, National Indian Gaming Commission, 1441 L Street, NW., Suite 9100, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Lael Echo-Hawk, National Indian Gaming Commission, 1441 L Street, NW., Suite 9100, Washington, DC 20005. Telephone: 202/632–7009; e-mail: *reg.review@nigc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Indian Gaming Regulatory Act (IGRA or Act), Public Law 100–497, 25 U.S.C. 2701 *et seq.,* was signed into law on October 17, 1988. The purposes of IGRA include providing a statutory basis for the operation of gaming by Indian Tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments; ensuring that the Indian tribe is the primary beneficiary of the gaming operation; and declaring that the

establishment of independent federal regulatory authority for gaming on Indian lands, the establishment of federal standards for gaming on Indian lands, and the establishment of a National Indian Gaming Commission are necessary to meet congressional concerns regarding gaming and to protect such gaming as a means of generating tribal revenue. 25 U.S.C. 2702.

The IGRA authorizes the NIGC to promulgate such regulations and guidelines as it deems appropriate to implement the provisions of the Act. 25 U.S.C. 2706(b)(10). On November 12, 2010, the Commission issued a Notice of Inquiry (NOI) requesting comment on which of its regulations were most in need of revision, in what order the Commission should review its regulations, and the process NIGC should utilize to make revisions. The Notice of Inquiry was published in the **Federal Register** on November 18, 2010. 75 FR 70680.

As the Commission previously explained, the regulatory review facilitates effective implementation of IGRA and coincides with Executive Order 12866 entitled "Regulatory Planning and Review" providing for Federal entities to identify agency statements of regulatory priorities and additional information about the most significant regulatory activities planned for the coming year.

On January 18, 2011, President Obama issued Executive Order 13563, Improving Regulation and Regulatory Review. Executive Order 13563 sets forth the general principle that regulatory systems "must identify and use the best, most innovative, and least burdensome tools for achieving regulatory ends." This Executive Order further provides that agencies tailor "regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations[.]" Further, agencies must "to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt[.]" In the spirit of this Executive Order and Executive Order 13175 regarding consultation with Indian Tribal Governments, the NIGC provides this comprehensive regulatory review agenda. The agenda is a product of extensive tribal consultation and extensive public comment.

II. Process for Review

A. Groups

Based on both public comments and tribal consultations, the Commission has decided to organize its regulatory review into five separate groupings. The Commission will organize its consultations with Tribes according to these groupings. The regulations in each group will be reviewed separately from the regulations in the other groups, and specific regulations in each group may proceed through the regulatory review process independently from the other regulations in a particular group.

1. Group 1 will include a review of:

(a) A Buy Indian Act regulation;

(b) 25 CFR part 523—Review and Approval of Existing Ordinances or Resolutions;

(c) 25 CFR part 514—Fees;

(d) 25 CFR part 559—Facility License Notifications, Renewals, and Submissions; and

(e) 25 CFR part 542—Minimum Internal Control Standards for Class III Gaming.

2. Group 2 will include a review of:

(a) 25 CFR part 573—Enforcement; and

(b) Regulations concerning proceedings before the Commission, including 25 CFR part 519—Service, 25 CFR part 524—Appeals, 25 CFR part 539—Appeals, and 25 CFR part 577—Appeals Before the Commission.

3. Group 3 will include a review of:

(a) 25 CFR part 543—Minimum Internal Control Standards for Class II Gaming; and

(b) 25 CFR part 547—Minimum Technical Standards for Gaming Equipment Used with the Play of Class II Games.

4. Group 4 will include a review of:

(a) 25 CFR part 556—Background Investigations for Primary Management Officials and Key Employees;

(b) 25 CFR part 558—Gaming Licenses for Key Employees and Primary Management Officials;

(c) 25 CFR part 556—Background Investigations for Primary Management Officials and Key Employees, "Pilot Program.";

(d) 25 CFR part 571—Monitoring and Investigations;

(e) 25 CFR part 531—Collateral Agreements;

(f) 25 CFR part 537—Background Investigations for Persons or Entities With a Financial Interest in, or Having Management Responsibility for, a Management Contract; and

(g) 25 CFR part 502—Definitions.

5. Group 5 will include a review of:

(a) 25 CFR part 518—Self Regulation of Class II Gaming;

(b) A Sole Proprietary Interest regulation; and

(c) 25 CFR part 542, Minimum Internal Control Standards for Class III Gaming.

B. Review Phases

Each group of regulations will be addressed in the three phases listed below. The purpose of the three phases is to facilitate meaningful consultation with Tribes, consistent with Executive Order 13175, prior to promulgating any revisions, amendments, or new rules. While Tribal Advisory Committees (TAC) have been utilized by the NIGC in the past, NIGC received comments from Tribes expressing their view that the TAC process was not a substitute for tribal consultation.

In response to comments received on the NOI, the Commission has established the tribal consultation schedule below. The NIGC will attempt to provide significant means for tribal input through tribal consultation meetings and broad, transparent opportunities to submit written comments at every phase before the Notice of Final Rule is published.

1. *Drafting Phase.* Consistent with Executive Order 13175, the Commission will endeavor to include Tribes in the drafting phase of any new or amended rule. The purpose of the drafting phase is to ensure tribal participation early in the drafting of any rule with tribal implications. The drafting phase will begin with either a preliminary draft based on previous comments received by NIGC, preliminary proposed amendments to a current regulation, or preliminary proposals provided by Tribes or tribal organizations. The drafting phase will include tribal consultation meetings and an opportunity for the public to submit written comments. Following completion of the drafting phase, the Commission anticipates that generally it will proceed to issuing a Notice of Proposed Rulemaking (NPRM) that will be published in the **Federal Register.**

2. *Notice of Proposed Rulemaking Phase.* The NIGC will draft a NPRM. The Commission anticipates that a preamble to a NPRM will summarize comments received during the drafting phase and include a discussion of the substantive provisions of the proposed rule. The Commission anticipates that for any NPRM it will endeavor to provide a public comment period of approximately 60 days and will consult with Tribes during that period on the proposed rule. After the close of the comment period, a Notice of Final Rule will be prepared and published in the **Federal Register.**

3. *Notice of Final Rule Phase.* The Commission will draft a Final Rule based on all comments received during the NPRM phase. The preamble to the final rule will summarize comments received and include a discussion of the substantive provisions of the final rule. Generally, the Commission anticipates that final rules will become effective 45 days after publication.

C. File Formats and Required Information for Submitting Comments

If submitting by electronic mail: send to *reg.review@nigc.gov* a message containing the name of the person making the submission, his or her title and organization (if the submission of an organization), mailing address, telephone number, fax number (if any), and e-mail address. The document itself must be sent as an attachment and must be in a single file and in recent, if not current, versions of: (1) Adobe Portable Document File (PDF) format (preferred); or (2) Microsoft Word file formats.

If submitting by print only: anyone who is unable to submit a comment in electronic form should submit an original and two paper copies by hand or by mail to the appropriate address listed above. Use of surface mail is strongly discouraged owing to the uncertainty of timely delivery.

III. Consultation Schedule for Review

Subject to future changes, NIGC will hold tribal consultations on the following dates as set forth in more detail below. The Commission has attempted to schedule consultations in every region and to hold those consultations either before or after other events widely attended by tribal officials. The purpose of scheduling consultations in this manner is both to encourage participation of tribal officials and to conserve tribal resources by reducing the amount of travel of participants.

For additional information on consultation locations and times, please refer to the Web site of the National Indian Gaming Commission, *http://www.nigc.gov.* Please RSVP at *consultation.rsvp@nigc.gov.*

Please note that the Commission intends to post all written comments received during the regulatory review process on the Tribal Consultation Web page of the NIGC Web site located at *http://www.nigc.gov.*

Consultation date	Event	Location	Regulation group(s)
Apr. 28, 2011	Oklahoma Tribal Gaming Regulators Association Spring Conference.	Choctaw Casino Resort, Durant, OK	1
May 2, 2011	Tribal Self-Governance Conference	Spa Resort Casino, Palm Springs, CA	1
May 5, 2011	Southern Gaming Summit & Bingo World Conference.	Mississippi Coast Coliseum & Convention Ctr., Biloxi, MS.	1
May 16, 2011	Great Plains/Rocky Mountains/Midwest Tradeshow & Conference.	Mystic Lake Casino and Resort, Prior Lake, MN	1, 2
May 20, 2011	ATNI Mid Year Conference	Coeur d'Alene Resort & Casino, Plummer, ID	1, 2
June 8, 2011	Indian Bingo and Class II Summit	Mystic Lake Casino and Resort, Prior Lake, MN	2, 3, 4
June 13, 2011	NCAI Mid Year Conference	Hyatt Regency, Milwaukee, WI	3, 4
June 21–22, 2011	CNIGA Membership Meeting	Harrah's Rincon Hotel & Casino, Valley Center, CA	1, 2, 3, 4
July 14–15, 2011	Northwest Indian Gaming Expo	Tulalip Resort Casino, Tulalip, WA	1, 2, 3, 4, 5
July 20–21, 2011	NIGC Consultation—Southwest	Hyatt Regency Tamaya Resort, Santa Ana Pueblo, NM.	3, 4, 5
July 28–29, 2011	NIGC Consultation—Northeast	DOI South Auditorium, Washington, DC	3, 4, 5
Aug. 18–19, 2011	Oklahoma Indian Gaming Association Conference	Tulsa, OK	2, 3, 4, 5
Aug. 25–26, 2011	NIGC Consultation—Southwest	Wild Horse Resort Casino, Scottsdale, AZ	2, 3, 5
Sept. 7–8, 2011	NIGC Consultation—United Tribes International Powwow.	Radisson Hotel, Bismarck, ND	2, 3, 4, 5
Sept. 15–16, 2011	National Tribal Gaming Commissioner/Regulator Association Fall Meeting.	Chuckchansi Gold Resort & Casino, Coarsegold, CA	2, 3, 4, 5
Sept. 19–20, 2011	NIGC Regional Training	Sky Ute Casino Resort, Ignacio, CO	3, 4, 5
Sept. 29–30, 2011	NIGC Consultation—Northeast	Turning Stone Resort & Casino, Verona, NY	3, 5
Oct. 6–7, 2011	G2E—National	Sands Expo and Convention Ctr., Las Vegas, NV	3, 4, 5
Oct./Nov. 2011	USET Annual Meeting	Mississippi Choctaw, MS	3, 4, 5
Nov. 3–4, 2011	NCAI Annual Conference	Portland, OR	3, 5
Nov. 14–15, 2011	NIGC Consultation—California	Spa Resort Casino, Palm Springs, CA	5
Nov. 17–18, 2011	NIGC Consultation—Southwest	Fort McDowell Casino, Scottsdale, AZ	5
Nov. 30–Dec. 1, 2011.	NIGC Consultation—Oklahoma	Downstream Casino Resort, Miami, OK	5
Dec. 5–6, 2011	NIGC Consultation—Northwest	Clearwater Casino Resort, Suquamish, WA	5
Dec. 8–9, 2011	NIGC Consultation—Great Plains	Turtle Creek Casino & Hotel, Williamsburg, MI	5
Dec. 12–13, 2011	NIGC Consultation—Northeast	DOI South Auditorium, Washington, DC	5
Jan. 11–12, 2012	NIGC Consultation—Eastern	Wind Creek Casino, Atmore, AL	3
Jan. 18–19, 2012	NIGC Consultation—Great Plains	Crowne Plaza, Billings, MT	3
Jan. 23–24, 2012	NIGC Consultation—California	Win-River Casino, Redding, CA	3
Jan. 26–27, 2012	NIGC Consultation—Northwest	7 Feathers Casino, Canyonville, OR	3
Jan. 30–31, 2012	NIGC Consultation—Oklahoma	Cherokee Hard Rock, Tulsa, OK	3
Feb. 2–3, 2012	NIGC Consultation—Southwest	Isleta Hard Rock Casino Resort, Albuquerque, NM	3
Feb. 7–8, 2012	NIGC Consultation—Great Plains	Radisson Hotel, Rapid City, SD	3

IV. Group One: Part 514—Fees; Part 523—Review and Approval of Existing Ordinances or Resolutions; Part 559—Facility License Notifications, Renewals, and Submissions; Part 542—Class III Minimum Internal Controls; Buy Indian Act

A. Part 514—Fees

1. Should the Commission consider revising Part 514 to base fees on the Tribe's gaming operation's fiscal year?

The NOI requested comment on whether the Commission should consider revising this Part to base fees on the Tribe's gaming operation's fiscal year. Some comments indicated that this was a low priority. Other comments were generally supportive of the Commission considering this change, noting that a calculation based on audited financial statements for the fiscal year would be more convenient. Commentators did note that if the Commission reviewed Part 514, any amendments should provide for an adequate transition period. Other comments suggested that the Commission consider a flexible approach by which each tribe could determine whether to calculate fees on a fiscal or calendar year.

The Commission understands that it may be difficult to calculate fees based on the calendar year, which may lead to frequent audit adjustments. The Commission strives to be cognizant of and sensitive to the practical issues raised by any potential amendments to this Part, including additional costs and the need to provide for an adequate transition period. However, the Commission believes that review of the Part is appropriate and has the potential to reduce the number of audit adjustments. The Commission will review this Part during the Group One period.

2. Should this Part define *Gross Gaming Revenue* consistent with Generally Accepted Accounting Principles for the purposes of calculating the fees?

Additionally, the NOI asked whether the Commission should consider adding to Part 514 a definition of *gross gaming revenue* consistent with the GAAP definition of this term. Some public comments suggested that a revision would promote consistency and uniformity. Other comments questioned whether the NIGC could define *gross gaming revenue* given that IGRA defines the term.

The Commission believes that further review of this regulation is appropriate. An amendment consistent with IGRA could promote consistency and uniformity, which may result in greater efficiency. The Commission will review this Part during the Group One period.

3. Should this Part include a section on the fingerprinting processing fees?

The NOI asked whether the Commission should consider amending this Part to include fingerprint processing fees and whether to provide for a review of the costs on an annual basis and adjust the fingerprint processing fee accordingly. Additionally, the NOI asked whether the Commission should consider providing that fees collected for processing fingerprints should be included in the total revenue collected by the Commission that is subject to statutory limitation. Comments supported the inclusion of the fingerprinting fees in the calculation of gross revenues. Other comments suggested that fingerprinting costs be paid by those Tribes that use the service rather than by the general fees paid by Tribes. Other comments suggested that the Commission provide a public accounting of how the fees are expended by the Commission. Some comments suggested including the fingerprinting fees as part of the annual fees while other comments suggested that the fees be separate from the annual fees collected from Tribes. Those commentators who recommended keeping the fees separate explained that the fingerprinting fees were generally an expense paid by gaming commissions rather than gaming operations. Other Tribes suggested that the Commission consider the revision if including fingerprinting fees resulted in a lower annual fee. Finally, several comments suggested the issuance of a bulletin instead of a regulation to address this issue.

The Commission believes that further review of this proposed regulation is appropriate. Amendments to this Part could provide greater clarity to the process and potentially could result greater efficiency and in cost savings. This issue will be reviewed during the Group One period.

4. Should the Commission consider a late payment system in lieu of a Notice of Violation for Tribes submitting their fees to the NIGC late?

Finally, the NOI requested comment on whether the Commission should consider a late payment system in lieu of a Notice of Violation (NOV) for addressing fees submitted late to the NIGC. Public comments uniformly supported the Commission reviewing this approach. Many commentators observed that issuing a NOV is a serious measure that may overly penalize Tribes for late submission of their fees. Commentators noted that a NOV can cause a financial hardship to Tribes by lowering a Tribe's bond rating and damage its business reputation. Some comments recommended an automatic additional percentage as a late payment penalty or a development of a schedule of fines or penalties based on passage of time or the number late payments. Tribes commented that NOVs should continue to be utilized for frequent or repeat violators in order to prevent abuse of the system. Another commentator suggested that an NOV only be issued after a specified number of missed payments or dollar amount, if there is gross negligence, or the Tribe has publicly stated its intention not to pay the NIGC. This commentator suggested that an NOV should be considered only after negotiations with the Tribes have failed. Many commentators noted that any approach should be flexible and include due process so that a Tribe can cure any purported late payment before the NIGC issues either a ticket or NOV.

The Commission believes that further review of the potential regulatory amendment is appropriate. A NOV is a serious action issued to address significant violations of IGRA. A late payment system may be appropriate to address infrequent situations wherein a tribe submits fees late to the NIGC. This issue will be considered by the Commission during the Group One period.

B. Part 523—Review and Approval of Existing Ordinances or Resolutions

Comments received in response to the NOI suggest repealing this regulation as obsolete. The regulation applies only to gaming ordinances enacted by Tribes prior to January 22, 1993, and not submitted to the Chairwoman. During the Group One period, the Commission will consider repealing this Part.

C. Part 542—Class III Minimum Internal Control Standards

The NOI requested comment regarding Class III Minimum Internal Control Standards (MICS). The public was asked to comment on how this issue should be addressed, particularly in light of the decision in the *Colorado River Indian Tribes v. National Indian Gaming Commission.* Some comments suggested that Part 542 should be replaced by a set of recommended guidelines. Comments explained that many tribal gaming regulatory authorities rely on Part 542 to set the base of their minimum internal control standards. Other comments explained

that some Tribes have adopted the Federal rule verbatim. Some comments stated that some Tribes have drafted their own internal control standards. Additionally, commentators noted that some state compacts incorporate part 542 by reference. Some comments explained that some Tribes amended their gaming ordinance authorizing the NIGC to regulate and enforce part 542 in their gaming operations. Other commentators explained that in California, their state compacts have been effectively revised to provide for Federal oversight to the extent specified in the agreements.

A number of Tribes commented that the NIGC does not have the authority to enforce Class III MICS. A majority of Tribes that submitted comments suggested that the NIGC issue MICS as guidance. Some Tribes suggested addressing the enforcement of Class III MICS through the self-regulation process. Other comments suggested applying a different fee rate for those Tribes that have amended their tribal gaming ordinance such that the NIGC can regulate and enforce Part 542. Some Tribes recommended keeping the Class III MICS in regulation form and convening a new Tribal Advisory Committee to update the current regulation. Other Tribes recommended repeal of Part 542. Many of the comments received by NIGC stated that this was a high priority.

Review of this Part is a high priority of the Commission. NIGC recognizes that this is a complex and important issue that impacts Tribes differently across the country. During the Group One period, NIGC will continue to evaluate and develop solutions for addressing Class III MICS in a manner consistent with IGRA that does not create a regulatory void.

D. Part 559—Facility License Notifications, Renewals, and Submissions

The NOI requested comment on whether the Commission should consider revising this Part. Many Tribes commented that the process by which the regulation was adopted did not allow sufficient time for meaningful tribal consultation. Some commentators stated that Environmental Public Health and Safety (EPHS) matters and facility licenses should be left to the authority and jurisdiction of the Tribes. Some Tribes stated that in addition to tribal regulations and compact provisions, other federal and tribal agencies already regulate EPHS issues. Some comments also recommended reviewing § 502.22—"Construction and maintenance of the gaming facility, and the operation of that gaming is conducted in a manner which adequately protects the environment and the public health and safety" as part of this review.

Some comments questioned the necessity of providing Indian lands information considering that other Federal agencies already have this information and that requiring Tribes to re-submit documentation was duplicative and unnecessary. Some comments stated that the 120-day notice period was arbitrary and that NIGC should have consulted on the time frame before implementing the regulation. Some commentators stated that the regulation should provide some flexibility regarding the 120-day notice period. Some comments expressed concern that the regulation could potentially limit the authority of tribal gaming commissions. Other comments noted that the regulation helped raise the importance of those issues at the tribal level and benefited the Tribe.

Based on the many comments requesting that this regulation be reviewed, the NIGC will use the Group One period to review this Part and § 502.22 "Construction and maintenance of the gaming facility, and the operation of that gaming is conducted in a manner which adequately protects the environment and the public health and safety."

E. Buy Indian Act Regulation

The NOI requested comment on whether the Commission should consider adopting a regulation which would require the NIGC to give preference to qualified Indian-owned businesses when purchasing goods or services as defined by the "Buy Indian Act," 25 U.S.C. 47. The Buy Indian Act provides authority to set aside procurement contracts for qualified Indian-owned businesses. While many comments support consideration of this change, a number of comments suggested that utilizing an internal policy or process would be equally effective.

The Commission believes that a regulation on this issue may promote long term and consistent application by the agency. During the Group One period, the Commission will review a potential regulation.

Subject to future changes, NIGC will hold tribal consultations on Group One regulations on the following dates as set forth in more detail below. The Commission has attempted to schedule consultations in every region and to hold those consultations either before or after other events widely attended by tribal officials. The purpose of scheduling consultations in this manner is both to encourage participation of tribal officials and to conserve tribal resources by reducing the amount of travel of participants.

GROUP 1

Date	Event	Location
Apr. 28, 2011	Oklahoma Tribal Gaming Regulators Association Spring Conference.	Choctaw Casino Resort, Durant, OK.
May 2, 2011	Tribal Self-Governance Conference	Spa Resort Casino, Palm Springs, CA.
May 5, 2011	Southern Gaming Summit & Bingo World Conference	Mississippi Coast Coliseum & Convention Ctr., Biloxi, MS.
May 16, 2011	Great Plains/Rocky Mountains/Midwest Tradeshow & Conference.	Mystic Lake Casino and Resort, Prior Lake, MN.
May 20, 2011	ATNI Mid Year Conference	Coeur d'Alene Resort & Casino, Plummer, ID.
June 21–22, 2011	CNIGA Membership Meeting	Harrah's Rincon Hotel & Casino, Valley Center, CA.
July 14–15, 2011	Northwest Indian Gaming Expo	Tulalip Resort Casino, Tulalip, WA.

V. Group Two: Part 573—Enforcement; Proceedings Before the Commission, Including Part 519—Service, Part 524—Appeals [of disapproval of a gaming ordinance, resolution or amendment], Part 539—Appeals [of approval or disapproval of a management contract or amendment], and Part 577—Appeals Before the Commission

A. Enforcement

The NOI requested comment on whether the Commission should consider promulgating a regulation authorizing the withdrawal of an NOV after it has been issued. Some Tribes stated that because there was no prohibition against withdrawing an NOV, the regulation was unnecessary. Other comments stated that while the Chairwoman retains authority to withdraw an NOV, a specific regulation outlining the process and circumstances for the withdrawal was appropriate. Some comments stated that only the entire Commission should withdraw an NOV.

Many comments stated that the issuance of an NOV can potentially have serious negative economic impact on the Tribe. These comments recommended the NIGC institute a compliance model before utilizing a punitive approach. Such an approach would provide for tribal regulatory agencies to take enforcement action in the first instance and provide a notice and opportunity to cure before NIGC action is taken. Tribes also recommended that NOVs be automatically expunged after a specified number of years and removed from the Web site or, in the alternative, identifying information should be removed from NOVs on the Web site.

The Commission agrees that under no circumstance should an NOV be a surprise to Tribes. This Commission established Assistance, Compliance, and Enforcement as its policy for regulating Tribes and agrees that a regulation identifying the process for ensuring compliance would benefit the industry. The Commission will be reviewing this potential regulation during the Group 2 period.

B. Proceedings Before the Commission

The NOI requested comment on whether the Commission should consider more comprehensive and detailed procedural rules for proceedings before the Commission. Some Tribes expressed a concern that a more formal process may be more burdensome, costly, and delay the process for review. Other comments recommended that more detail would provide greater certainty for Tribes. Some comments recommended that the Chairwoman should be prohibited from participating in appeals of agency actions issued by the Chairwoman. Those comments noted that the underlying principle of these procedural rules should be the guarantee of due process. Many comments requested concise, streamlined rules in order to protect all parties and recommended reviewing the appeals process utilized by other federal agencies for guidance.

Included in the comments received by Tribes regarding proceedings before the Commission were a number of comments requesting clarification on submission and approval of gaming ordinances and amendments. Some Tribes expressed concern about the length of time it takes for approval of an ordinance and requested further clarity on how the Commission contacts Tribes if there are questions concerning a proposed ordinance.

The Commission recognizes the perception that the current process may not provide clarity to Tribes when appealing the Chairwoman's actions. The Commission will review these regulations during the Group Two period.

Subject to future changes, NIGC will hold tribal consultations on Group Two regulations on the following dates as set forth in more detail below. The Commission has attempted to schedule consultations in every region and to hold those consultations either before or after other events widely attended by tribal officials. The purpose of scheduling consultations in this manner is both to encourage participation of tribal officials and to conserve tribal resources by reducing the amount of travel of participants.

GROUP 2

Date	Event	Location
May 16, 2011	Great Plains/Rocky Mountains/Midwest Tradeshow & Conference	Mystic Lake Casino and Resort, Prior Lake, MN.
May 20, 2011	ATNI Mid Year Conference	Coeur d'Alene Resort & Casino Plummer, ID.
June 8, 2011	Indian Bingo and Class II Summit	Mystic Lake Casino and Resort, Prior Lake, MN.
June 21–22, 2011	CNIGA Membership Meeting	Harrah's Rincon Hotel & Casino, Valley Center, CA.
July 14–15, 2011	Northwest Indian Gaming Expo	Tulalip Resort Casino, Tulalip, WA.
Aug. 18–19, 2011	Oklahoma Indian Gaming Association Conference	Tulsa, OK.
Aug. 25–26, 2011	NIGC Consultation—Southwest	Wild Horse Resort Casino, Scottsdale, AZ.
Sept. 7–8, 2011	NIGC Consultation—United Tribes International Powwow	Radisson Hotel, Bismarck, ND.
Sept. 15–16, 2011	National Tribal Gaming Commissioner/Regulator Association Fall Meeting.	Chuckchansi Gold Resort & Casino, Coarsegold, CA.

VI. Group Three: Part 543—Minimum Internal Control Standards for Class II Gaming; Part 547—Minimum Technical Standards for Gaming Equipment Used with the Play of Class II Games

The NOI also requested comment on the Class II Minimum Internal Control Standards (MICS) and Minimum Technical Standards. Specifically, the NOI requested comment on how to proceed with revisions to these Parts. While the Technical Standards were revised in 2008, the NOI noted that Tribes had requested additional updates.

The Commission received many comments requesting the review and update of both the Class II MICS and Class II Technical Standards. Comments emphasized the importance of Class II gaming and the need to ensure that the regulations address changes in technology. Some comments recommended a Tribal Advisory Committee be formed with representation from a broad group of interests, including Tribes, manufacturers, and testing laboratories. Other comments suggested the

regulations be revised utilizing a negotiated rulemaking process. Finally, some commentators stated that electronic gambling machines are public health hazards and that the technical standards should distinguish between harmful and less harmful games. These comments stated that NIGC should require the industry to demonstrate that Class II games are in fact safe.

Based on the comments received, the Commission anticipates that it will review this Part during the Group Three period. Class II MICS and Technical Standards are important to both Tribes and the public.

Subject to future changes, NIGC will hold tribal consultations on Group Three regulations on the following dates as set forth in more detail below. The Commission has attempted to schedule consultations in every region and to hold those consultations either before or after other events widely attended by tribal officials. The purpose of scheduling consultations in this manner is both to encourage participation of tribal officials and to conserve tribal resources by reducing the amount of travel of participants.

GROUP 3

Date	Event	Location
June 8, 2011	Indian Bingo and Class II Summit	Mystic Lake Casino and Resort, Prior Lake, MN.
June 13, 2011	NCAI Mid Year Conference	Hyatt Regency, Milwaukee, WI.
June 21–22, 2011	CNIGA Membership Meeting	Harrah's Rincon Hotel & Casino, Valley Center, CA.
July 14–15, 2011	Northwest Indian Gaming Expo	Tulalip Resort Casino, Tulalip, WA.
July 20–21, 2011	NIGC Consultation—Southwest	Hyatt Regency Tamaya Resort, Santa Ana Pueblo, NM.
July 28–29, 2011	NIGC Consultation—Northeast	DOI South Auditorium, Washington, DC.
Aug. 18–19, 2011	Oklahoma Indian Gaming Association Conference	Tulsa, OK.
Aug. 25–26, 2011	NIGC Consultation—Southwest	Wild Horse Resort Casino, Scottsdale, AZ.
Sept. 7–8, 2011	NIGC Consultation—United Tribes International Powwow	Radisson Hotel, Bismarck, ND.
Sept. 15–16, 2011	National Tribal Gaming Commissioner/Regulator Association Fall Meeting.	Chuckchansi Gold Resort & Casino, Coarsegold, CA.
Sept. 19–20, 2011	NIGC Regional Training	Sky Ute Casino Resort, Ignacio, CO.
Sept. 29–30, 2011	NIGC Consultation—Northeast	Turning Stone Resort & Casino, Verona, NY.
Oct. 6–7, 2011	G2E—National	Sands Expo and Convention Ctr., Las Vegas, NV.
Oct./Nov. 2011	USET Annual Meeting	Mississippi Choctaw, MS.
Nov. 3–4, 2011	NCAI Annual Conference	Portland, OR.
Jan. 11–12, 2012	NIGC Consultation—Eastern	Wind Creek Casino, Atmore, AL.
Jan. 18–19, 2012	NIGC Consultation—Great Plains	Crowne Plaza, Billings, MT.
Jan. 23–24, 2012	NIGC Consultation—California	Win-River Casino, Redding, CA.
Jan. 26–27, 2012	NIGC Consultation—Northwest	7 Feathers Casino, Canyonville, OR.
Jan. 30–31, 2012	NIGC Consultation—Oklahoma	Cherokee Hard Rock, Tulsa, OK.
Feb. 2–3, 2012	NIGC Consultation—Southwest	Isleta Hard Rock Casino Resort, Albuquerque, NM.
Feb. 7–8, 2012	NIGC Consultation—Great Plains	Radisson Hotel, Rapid City, SD.

VII. Group Four: Part 556—Background Investigations for Primary Management Officials and Key Employees; Part 558—Gaming Licenses for Key Employees and Primary Management Officials; Part 556—Formalizing the "Pilot Program"; Part 571—Monitoring and Investigations; Part 531—Collateral Agreements; Part 537—Background Investigations for Persons or Entities With a Financial Interest in, or Having Management Responsibility for, a Management Contract; and Part 502—Definitions

A. Background Investigations and Pilot Program

The NOI requested comment on whether the Commission should consider formalizing through regulation a long-standing "pilot program" under which participating Tribes provide NIGC with concise information pertaining to employees licensed or denied a license in lieu of the process outlined in Part 556. Comments were submitted supporting the Commission's consideration of amending the regulation to incorporate the pilot program. One Tribe stated that the pilot program should be formalized so long as no changes are made to the current program. Some Tribes commented that most Tribes already participate in the program.

Additionally, the NOI requested comment on whether the NIGC should process fingerprint cards for non-primary management officials or non-key employees. Many comments supported increased access to fingerprint and background information for additional employees but expressed that this not be mandated by the NIGC. Some commentators requested that this should include vendors and contractors as well. Additionally, many comments requested that the NIGC provide tribal gaming commissions access to licensing information via an online database or expansion of the TBIS database.

The Commission agrees that the "pilot program" is widely participated in by a large number of gaming Tribes and that access to background information is important to shield Tribes from organized crime and other corrupting influences. Based on the comments received, the Commission intends to review these regulations during the Group Four period.

B. Management Contracts

1. Collateral Agreements

The NOI requested comment on whether the Commission should consider approving collateral agreements to a management contract. Some comments asserted that collateral agreements are outside the scope of NIGC authority and requiring submission and approval of those

agreements would second-guess tribal business decisions. One commentator stated that the NIGC should not expand authority over non-management business relationships of the Tribe. Additionally, some comments expressed concern that requiring the approval of non-management collateral agreements would affect their relationships with current or potential business partners, discourage private investment in Indian Country, and potentially call into question the validity of previously executed agreements. These commentators recommended the NIGC only review and approve those agreements containing management provisions. Another commentator suggested that the review and approval of collateral agreements would greatly reduce the risks to both Tribes and would-be management contractors, thus reducing overreaching by third parties.

Other comments supported the review and approval of collateral agreements by the NIGC. Those Tribes stated that it is the NIGC's trust responsibility to ensure that such agreements do not violate the sole proprietary interest provisions of IGRA. Other Tribes suggested that the NIGC be available to review and approve collateral agreements solely at the request of the Tribe. One commentator suggested drafting a regulation that specifies the maximum amount of revenue that could be included in collateral agreements.

Based on the comments received in response to the NOI, the Commission intends to review this regulation during the Group Four period.

2. Background Information for Persons or Entities With a Financial Interest in, or Having Management Responsibility for, a Management Contract

The NOI requested comment on whether the Commission should consider amending this regulation to specify that a contractor should be required to submit background information when the contract is only for Class III gaming. Some Tribes stated that the NIGC has no authority over Class III gaming and thus no authority over Class III management contractors. Other Tribes stated that IGRA specifically grants the NIGC the authority to complete background investigations on Class II and Class III management contractors. One Tribe stated that because background investigations are a requirement of the tribal-state compact, requiring an additional background investigation is duplicative, burdensome, and overreaching. Other comments recommended that in addition to the clarification, the NIGC should clarify submission requirements for Class II and Class III background investigations and streamline the background investigation process to allow for expedited review of individuals and entities holding a gaming license in other tribal and state jurisdictions.

The Commission agrees that this issue has been the point of confusion for Tribes and the public. The Commission intends to review this regulation during the Group Four period.

C. Inspection and Access to Records

The NOI requested comment on whether there was a need to clarify Commission access to records located off-site, including at sites maintained or owned by third parties. One comment stated that this section should be revised to explicitly deny the NIGC access to Class III records. Some comments stated that the NIGC has the right to access all records of the Tribal gaming enterprise, regardless of location. Other comments stated that NIGC should only request records within its statutory authority. Another comment suggested that the regulation be amended to require Tribes to maintain all records on site.

The Commission acknowledges the need to clarify Commission access to records located off-site, including at sites maintained and owned by third parties. The Commission intends to review this regulation during the Group Four period.

D. Definitions—Net Revenues—management fee

The NOI asked whether the Commission should consider whether the definition of *Net revenues—management fee* should be defined to be consistent with the General Accepted Accounting Principles (GAAP) when determining the management fee. Many comments stated that if this definition was amended, it would need to be consistent with the statutory definition of *Net Revenue* contained in IGRA, 25 U.S.C. 2703(9). Other comments stated that it should be defined consistent with industry standards such as GAAP. One comment noted that a clearer definition would have hastened the resolution of a dispute with their state over the definition of *net win* and *net revenue.* Another comment stated that the 2008 regulatory change to the definition of *Net revenue* does not comply with IGRA and needs to be revised to ensure it is consistent with the statutory definition.

Based on the comments that the definition could be clearer and that there may be some benefit to a definition consistent with GAAP, the Commission intends to review this definition during Group Four consultation and comment period.

Subject to future changes, NIGC will hold tribal consultations on Group Four regulations on the following dates as set forth in more detail below. The Commission has attempted to schedule consultations in every region and to hold those consultations either before or after other events widely attended by tribal officials. The purpose of scheduling consultations in this manner is both to encourage participation of tribal officials and to conserve tribal resources by reducing the amount of travel of participants.

GROUP 4

Date	Event	Location
June 8, 2011	Indian Bingo and Class II Summit	Mystic Lake Casino and Resort, Prior Lake, MN.
June 13, 2011	NCAI Mid Year Conference	Hyatt Regency, Milwaukee, WI.
June 21–22, 2011	CNIGA Membership Meeting	Harrah's Rincon Hotel & Casino, Valley Center, CA.
July 14–15, 2011	Northwest Indian Gaming Expo	Tulalip Resort Casino, Tulalip, WA.
July 20–21, 2011	NIGC Consultation—Southwest	Hyatt Regency Tamaya Resort, Santa Ana Pueblo, NM.
July 28–29, 2011	NIGC Consultation—Northeast	DOI South Auditorium, Washington, DC.
Aug. 18–19, 2011	Oklahoma Indian Gaming Association Conference	Tulsa, OK.
Aug. 25–26, 2011	NIGC Consultation—Southwest	Wild Horse Resort Casino, Scottsdale, AZ.
Sept. 7–8, 2011	NIGC Consultation—United Tribes International Powwow	Radisson Hotel, Bismarck, ND.

GROUP 4

Date	Event	Location
Sept. 15–16, 2011	National Tribal Gaming Commissioner/Regulator Association Fall Meeting.	Chuckchansi Gold Resort & Casino, Coarsegold, CA.
Sept. 19–20, 2011	NIGC Regional Training	Sky Ute Casino Resort, Ignacio, CO.
Oct. 6–7, 2011	G2E—National	Sands Expo and Convention Ctr., Las Vegas, NV.
Oct./Nov. 2011	USET Annual Meeting	Mississippi Choctaw, MS.

VIII. Group Five: Part 518—Self Regulation of Class II Gaming; proposed new Sole Proprietary Interest regulation; and implementation through regulation of Class III MICS options

A. Self Regulation of Class II Gaming

The NOI requested comment on whether the Commission should consider amending the process for obtaining a self-regulation certification. The Commission has heard that the administrative burden of completing the process significantly outweighs the benefits obtained from self regulation. Comments received from the NOI state that this regulation is not performing the function set forth in IGRA. Comments stated that the submission requirements are duplicative and unduly burdensome and the petition and annual reporting requirement undermine the purpose of self-regulating. One comment recommended that high standards should be maintained, and the benefits and recognition for self regulating Tribes should be higher. A Tribe noted that self regulation is a hallmark of tribal sovereignty.

The Commission agrees that this regulation is under-utilized by Tribes. Of over 220 gaming Tribes, only two Tribes have gone through the self-regulation certification process successfully. Due to the interest expressed in revising this regulation, the Commission intends to review this regulation during the Group Five period.

B. Sole Proprietary Interest

The NOI requested comments on whether the Commission should consider a regulation defining *sole proprietary interest* and providing a process through which a Tribe may request the NIGC to conduct a review and make a determination. Many Tribes and other interested parties have approached the NIGC requesting a determination regarding whether a single agreement, or a combination of agreements, violate IGRA's sole proprietary interest requirement. The comments received in response to the NOI reflect the complexity of this issue. Some comments state that the Commission should promulgate a regulation that would provide for review only at the request of a tribe. Other comments state that the percentages contained in IGRA serve to define what percentage might violate the Act's sole proprietary interest provision. One tribe suggested that if *Sole Proprietary Interest* is to be defined, then so should *Primary Beneficiary.* Some comments stated that a clear definition of *sole proprietary interest* may provide stability and access to financing. Other comments suggested that a definition might limit tribal access to capital. Some comments suggested that this determination be best left to the courts to decide.

The Commission acknowledges the comments regarding defining *Sole Proprietary Interest* through a regulation. Given the importance of this issue and IGRA's mandate that Tribes maintain the sole proprietary interest, the Commission intends to review this issue during the Group Five period.

C. Class III MICS Implementation

Based on the comments received during the Group One period, the Commision will address implementation of changes to Class III MICS during the Group Five period.

Subject to future changes, NIGC will hold tribal consultations on Group Five regulations on the following dates as set forth in more detail below. The Commission has attempted to schedule consultations in every region and to hold those consultations either before or after other events widely attended by tribal officials. The purpose of scheduling consultations in this manner is both to encourage participation of tribal officials and to conserve tribal resources by reducing the amount of travel of participants.

GROUP 5

Date	Event	Location
July 14–15, 2011	Northwest Indian Gaming Expo	Tulalip Resort Casino, Tulalip, WA.
July 20–21, 2011	NIGC Consultation—Southwest	Hyatt Regency Tamaya Resort, Santa Ana Pueblo, NM.
July 28–29, 2011	NIGC Consultation—Northeast	DOI South Auditorium, Washington, DC.
Aug. 18–19, 2011	Oklahoma Indian Gaming Association Conference	Tulsa, OK.
Aug. 25–26, 2011	NIGC Consultation—Southwest	Wild Horse Resort Casino, Scottsdale, AZ.
Sept. 7–8, 2011	NIGC Consultation—United Tribes International Powwow	Radisson Hotel, Bismarck, ND.
Sept. 15–16, 2011	National Tribal Gaming Commissioner/Regulator Association Fall Meeting.	Chuckchansi Gold Resort & Casino, Coarsegold, CA.
Sept. 19–20, 2011	NIGC Regional Training	Sky Ute Casino Resort, Ignacio, CO.
Sept. 29–30, 2011	NIGC Consultation—Northeast	Turning Stone Resort & Casino, Verona, NY.
Oct. 6–7, 2011	G2E—National	Sands Expo and Convention Ctr., Las Vegas, NV.
Oct./Nov. 2011	USET Annual Meeting	Mississippi Choctaw, MS.
Nov. 3–4, 2011	NCAI Annual Conference	Portland, OR.
Nov. 14–15, 2011	NIGC Consultation—California	Spa Resort Casino, Palm Springs, CA.
Nov. 17–18, 2011	NIGC Consultation—Southwest	Fort McDowell Casino, Scottsdale, AZ.

GROUP 5		
Date	Event	Location
Nov. 30–Dec. 1, 2011	NIGC Consultation—Oklahoma	Downstream Casino Resort, Miami, OK.
Dec. 5–6, 2011	NIGC Consultation—Northwest	Clearwater Casino Resort, Suquamish, WA.
Dec. 8–9, 2011	NIGC Consultation—Great Plains	Turtle Creek Casino & Hotel, Williamsburg, MI.
Dec. 12–13, 2011	NIGC Consultation—Northeast	DOI South Auditorium, Washington, DC.

IX. Regulations That the Commission Does Not Anticipate Revising

A. Part 502—Net Revenues—Allowable Uses.

The NOI requested comment on whether the Commission should consider a definition for the term *Net Revenues—allowable uses.* Many Tribes commented that this approach would intrude on tribal sovereignty, that tribal budgeting is an inherent tribal governmental function, and that such an approach could interfere with internal tribal matters. Further, tribal commentators noted that IGRA has a clear definition of *Net Revenues* and asserted that the NIGC does not have authority to change this definition. An accounting firm commented that no single formulaic approach should be applied to all Tribes. A few comments from the public stated that if NIGC were to promulgate a definition it should only do so after extensive review, consultation, and comment. Some comments supported promulgation of a definition, arguing that doing so could ensure Tribes consider the financial integrity of the gaming operation before funding other tribal programs.

After review of all the comments submitted, the Commission does not anticipate promulgating a definition of *net revenues—allowable uses* at this time. The Commission acknowledges the concerns articulated by the public and will examine alternatives consistent with IGRA that minimize intrusions on tribal sovereignty and internal tribal matters.

B. Part 502—Management Contract Definition

The NOI also requested comment on whether to expand the definition of *Management Contract* to include contracts that pay a fee based on a percentage of gaming revenues. The comments received from the public expressed concern that an expanded definition would inappropriately inhibit the ability of Tribes to enter into contracts, increase the administrative burden on the NIGC, and infringe upon tribal sovereignty. The public also commented that an expanded definition may be counter to IGRA's purpose of promoting tribal economic development, self-sufficiency, and strong tribal governments. Finally, many commentators noted that only contracts containing actual management provisions should be subject to the management contract approval process.

Regarding whether the Commission should consider promulgating a definition of acceptable compensation to a manager contractor, some Tribes commented that it would be beneficial for the Commission to consider issuing guidance on compensation and the upper limits on management fees. Some Tribes commented that a definition would intrude on business decisions of the Tribe. Another Tribe noted that amending the definition to establish a maximum fee might be appropriate, if enforced only against the company, not the Tribe. However, most comments suggested that NIGC should not revise this definition.

The Commission notes that IGRA establishes a maximum fee for management contractors. Based on a review of the public's comments, the Commission does not anticipate expanding the definition at this time. The Commission acknowledges the concerns articulated by the public and will examine alternatives consistent with IGRA that minimize intrusions on tribal sovereignty and promote the purposes of IGRA.

C. Part 533—Approval of Management Contracts

The NOI sought comment on whether to consider amending the trustee standard in Part 533 by adding two grounds for possible disapproval in § 533.6(b). One potential basis for disapproval would be because the management contract was not submitted in accordance with the submission requirements of 25 CFR part 533. The second potential basis for disapproval would be because the management contract does not contain the regulatory requirements for approval pursuant to 25 CFR part 531. Many comments received from Tribes were generally supportive of the Commission reviewing this part of the regulation. Some Tribes commented that if the Commission reviewed this part of the regulation and ultimately amended it as described, it could result in the disapproval of a management contract for technical reasons that could have been easily remedied.

The Commission does not anticipate amending Part 533 at this time. NIGC will continue to assist Tribes and potential management companies with the regulatory process set forth in IGRA and Part 533 to ensure full compliance with IGRA.

X. Other Regulations or Policies

A. Tribal Advisory Committee

The NOI requested comment on whether a policy or regulation should be developed identifying when a Tribal Advisory Committee (TAC) will be formed to provide input and advice to the NIGC, and if so, how the Committee members should be selected. Additionally, the NOI asked if cost should be a factor when considering whether to form a TAC.

In response to this request, Tribes commented that while TACs can be an effective way to communicate with Tribes, a TAC is not a substitute for tribal consultation as set forth in Executive Order 13175. Commentators indicated that cost is a valid consideration and that the expense of proceeding with a TAC is justified only if all views are considered by the Commission. Tribes also commented that the rules governing TACs can be unclear, resulting in confusion and uncertainty about the TAC process. Commentators also noted that the use of TAC has the potential to unnecessarily extend the time it takes to draft a rule.

Other comments received in response to the NOI noted that a TAC has the potential to provide useful input and perspective to the Commission particularly on topics that broadly impact Indian gaming. Additionally, comments advised that a TAC should be flexible in order to meet the specific needs of the NIGC and the Tribes. Tribes advised the NIGC to create a policy that is flexible and allows TACs to be utilized on a case-by-case basis.

The Commission recognizes the concern expressed in comments regarding the use of TACs. Additionally, the Commission also recognizes the potential benefit of a TAC, particularly when addressing a complex or technical regulation. While the Commission agrees with those comments suggesting a regulation may not be necessary, the Commission will consider drafting a policy guiding the development of a TAC, member selection, and meeting rules. The Commission anticipates that a TAC policy will be developed during 2011. The process for developing a TAC policy will be consistent with the NIGC's Tribal Consultation policy.

B. Communication Policy

The NOI asked whether the NIGC should consider developing a regulation or include as part of a regulation a process for determining how it communicates with Tribes. The NOI noted that NIGC communicates directly with the Tribal Gaming Regulatory Agency (TGRA) or Tribal Gaming Commission (TGC) as well as directly with the tribal government. The NOI asked whether the NIGC should consider promulgating a regulation or policy establishing a default method of communication unless otherwise directed by tribal resolution.

Many comments recommended that the Commission should not consider adopting a universal standard for communicating with Tribes. Tribes noted the variety in government structures and methods used by Tribes when taking official action. However, Tribes also noted the need for more effective communication with all affected parties, including the elected government officials, TGC, TGRA and the gaming operation. While the Commission agrees with those comments suggesting a regulation may not be necessary, the Commission will consider drafting a policy guiding how the Commission communicates with Tribes, their gaming regulatory bodies, and the gaming operation. This Commission anticipates that a policy will be developed over the course of the regulatory review process outlined above. The process for developing a Communication policy will be consistent with NIGC's Tribal Consultation policy.

C. Other Regulations

During this review process, the Commission attempted to identify those regulations identified by Tribes and/or the Commission in most need of review. However, the Commission reserves the right to review other regulations if needed throughout this review process. Review of regulations not specifically identified in this Notice will be reviewed utilizing the process described in Section IIB of this Notice.

Authority: 25 U.S.C. 2706(b)(10); E.O. 13175.

Dated: March 30, 2011, Washington, DC.

Tracie L. Stevens,

Chairwoman.

Steffani A. Cochran,

Vice-Chairwoman.

Daniel J. Little,

Associate Commissioner.

[FR Doc. 2011–7912 Filed 4–1–11; 8:45 am]

BILLING CODE 7565–01–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 104

RIN 1219–AB73

Pattern of Violations

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Mine Safety and Health Administration (MSHA) is extending the comment period on the proposed rule addressing Pattern of Violations (POV). This extension gives commenters additional time to review and comment on the proposed rule.

DATES: All comments must be received or postmarked by midnight Eastern Daylight Savings Time on April 18, 2011.

ADDRESSES: Submit comments by any of the following methods. Comments must be identified with "RIN 1219–AB73" in the subject line of the message.

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Electronic mail: zzMSHA-comments@dol.gov.*
- *Facsimile:* 202–693–9441.
- *Regular Mail or Courier:* MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209–3939. Courier must sign in at the receptionist's desk on the 21st floor.

FOR FURTHER INFORMATION CONTACT: Roslyn B. Fontaine, Chief, Regulatory Development Division, Office of Standards, Regulations, and Variances, MSHA, at *fontaine.roslyn@dol.gov* (e-mail); 202–693–9440 (voice); or 202–693–9441 (facsimile).

SUPPLEMENTARY INFORMATION:

Availability of Information

View Public Comments: MSHA will post all comments on the Internet without change, including any personal information provided. Access comments electronically at *http://www.msha.gov/REGS/Comments/2011-2255/POV.asp* or at *http://www.regulations.gov.* Review comments in person at MSHA, Office of Standards, Regulations, and Variances, at the address in the **ADDRESSES** section above.

E-mail notification: To subscribe to receive e-mail notification when the Agency publishes rulemaking documents in the **Federal Register**, go to: *http://www.msha.gov/subscriptions/subscribe.aspx.*

Extension of Comment Period and Request for Comments

On February 2, 2011 (76 FR 5719), MSHA published a proposed rule on Pattern of Violations (POV). In response to requests from interested parties, MSHA is extending the comment period from April 4, 2011, to April 18, 2011. MSHA solicits comments from the mining community on all aspects of the proposed rule. The proposed rule is available on MSHA's Web site at *http://www.msha.gov/REGS/FEDREG/PROPOSED/2011PROP/2011-2255.pdf.*

Dated: March 30, 2011.

Joseph A. Main,

Assistant Secretary of Labor for Mine Safety and Health.

[FR Doc. 2011–7975 Filed 4–1–11; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

[SATS No. PA–156–FOR; Docket ID: OSM 2010–0004]

Pennsylvania Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; reopening of the public comment period.

SUMMARY: We are reopening the public comment period related to an amendment to the Pennsylvania regulatory program (the "Pennsylvania program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The amendment is in response to fourteen required program amendments and the remining financial guarantee program. The

comment period is being extended to incorporate subsequent information that we received on two occasions from Pennsylvania. Taken together, the submissions specifically address fifteen required program amendments and the remining financial guarantee program. Pennsylvania intends to revise its program to be consistent with the corresponding Federal regulations. This document gives the times and locations that the Pennsylvania program and this submittal are available for your inspection, the comment period during which you may submit written comments, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments until 4 p.m., local time May 4, 2011. If requested, we will hold a public hearing on April 29, 2011. We will accept requests to speak until 4 p.m., local time on April 19, 2011.

ADDRESSES: You may submit comments, identified by "PA–156–FOR; Docket ID: OSM–2010–0004" by either of the following two methods:

Federal eRulemaking Portal: http://www.regulations.gov. The proposed rule has been assigned Docket ID: OSM–2010–0004. If you would like to submit comments through the Federal eRulemaking Portal, go to *http://www.regulations.gov* and follow the instructions.

Mail/Hand Delivery/Courier: Mr. George Rieger, Chief, Pittsburgh Field Division, Office of Surface Mining Reclamation and Enforcement, Harrisburg Transportation Center, 415 Market St., Suite 304, Harrisburg, Pennsylvania 17101.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Comment Procedures heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: In addition to obtaining copies of documents at *http://www.regulations.gov,* information may also be obtained at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Pittsburgh Field Division Office.

George Rieger, Chief, Pittsburgh Field Division, Office of Surface Mining Reclamation and Enforcement, Harrisburg Transportation Center, 415 Market St., Suite 304, Harrisburg, Pennsylvania 17101, Telephone: (717) 782– 4036, E-mail: *grieger@osmre.gov*.

Thomas Callaghan, P.G., Director, Bureau of Mining and Reclamation, Pennsylvania Department of Environmental Protection, Rachel Carson State Office Building, P.O. Box 8461, Harrisburg, Pennsylvania 17105–8461, Telephone: (717) 787–5015, E-mail: *tcallaghan@state.pa.us.*

FOR FURTHER INFORMATION CONTACT: George Rieger, Telephone: (717) 782–4036. E-mail: *grieger@osmre.gov*.

SUPPLEMENTARY INFORMATION:

I. Background on the Pennsylvania Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * * and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Pennsylvania program on July 30, 1982. You can find background information on the Pennsylvania program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Pennsylvania program in the July 30, 1982, **Federal Register** (47 FR 33050). You can also find later actions concerning the Pennsylvania program and program amendments at 30 CFR 938.11, 938.12, 938.13, 938.15, and 938.16.

II. Description of the Amendment

Original Submission: By letter dated March 17, 2010, Administrative Record Number 888.00, Pennsylvania sent us an amendment to its program, under SMCRA (30 U.S.C. 1201 *et seq.*). Pennsylvania's submittal, consisting of proposed regulatory/rule changes, was intended to address fourteen required amendments found at 30 CFR 938.16(rr), (tt), (uu), (vv), (ww), (xx), (zz), (aaa), (ccc), (iii), (jjj), (nnn), (ppp), and (ttt). It was also intended to address a partial disapproval of a 1998 submission that included regulations about remining financial guarantees. The disapproval is codified at 30 CFR 938.12(c)(3).

First Subsequent Submission: By letter dated September 14, 2010, Administrative Record Number 844.23, Pennsylvania sent us an amendment to its program under SMCRA that included an "effective as" demonstration for: (1) eight of the required amendments mentioned above—30 CFR 938.16(rr) (tt), (uu), (vv), (ww), (xx), (zz), and (aaa); and (2) one required amendment not previously addressed (yy). It also included revised guidance documents related to compliance/enforcement procedures, alternate enforcement, and coal and industrial mineral mining inspections. Reference documents were also included but are not part of this amendment. We are now incorporating this submission into this amendment.

Second Subsequent Submission: By letter dated November 16, 2010, Administrative Record No. 888.07, Pennsylvania sent us an amendment to its program under SMCRA to include the final-form rulemaking language that addressed the fourteen amendments mentioned above.

The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES**. A summary of the submission follows.

Required Amendments at 30 CFR 938.16: The 15 required amendments at 30 CFR 938.16 require Pennsylvania to submit proposed amendments to:

(rr) Section 86.36(c) to require permit denial for unabated violations of any Federal or State program under SMCRA, without the three-year limitation.

(tt) Section 86.37(a)(10) to require that all violations of the Federal SMCRA and all programs approved under SMCRA be considered in determining whether there is a demonstrated pattern of willful violations.

(uu) Section 86.37(a) to require that the criteria upon which the regulatory authority bases its decision to approve or deny a permit application are based on all information available to the regulatory authority.

(vv) Section 86.37(a) to include language that would prohibit permit approval if the applicant or anyone linked to the applicant through the definition of "owned or controlled" or "owns or controls" has forfeited a bond and the violation upon which the forfeiture was based remains unabated.

(ww) Sections 86.37(a)(9) and (a)(16) to require denial of a permit if it finds that those linked to the applicant through the definition of "owned or controlled" or "owns or controls" are delinquent in payment of abandoned mine reclamation fees or delinquent in the payment of State and Federal final civil penalty assessments.

(xx) Section 86.37(c) to require that the regulatory authority's reconsideration of its decision to approve the permit include a review of information, updated for the period

from permit approval to permit issuance, pertaining to the payment of abandoned mine reclamation fees and civil penalty fees and the status of unabated violations upon which a bond forfeiture was based.

(yy) Section 86.43 to require the regulatory authority to review the circumstances under which a permit was issued whenever it has reason to believe that the permit may have been improvidently issued.

(zz) Section 86.62(b)(2)(ii) to correct the cross-reference to section 86.63 with a reference to section 86.212(c).

(aaa) Sections 86.62(c) and 87.14(3) to include the requirement that the application include the address for each permit held by a related entity or company, and identification of the regulatory authority for such permit.

(ccc) Section 86.133(f) to require that exploration on areas designated as unsuitable for mining shall be subject to permitting requirements no less effective than the Federal regulations at 30 CFR 772.12.

(iii) Section 87.112(c) and 89.111(c) to require a seismic safety factor of at least 1.2 for all impoundments that meet the criteria of 30 CFR 77.216(a) or are located where failure could cause loss of life or serious property damage.

(jjj) Section 90.112(c)(2) to require that all impounding structures that meet the criteria of 30 CFR 77.216(a) and are either constructed of coal mine waste or intended to impound coal mine waste have sufficient spillway capacity and/or storage capacity to safely pass or control the runoff from the 6-hour PMP or greater precipitation event.

(nnn) Section 86.159(1)(2) to require two officer signatures for each corporate indemnitor, an affidavit from the corporation(s) certifying that entering into the indemnity agreement is valid under all applicable Federal and State laws, and documents that evidence the authority of the signatories to bind the corporation and an authorization by the parent corporation to enter into the indemnity agreement.

(ppp) Section 86.5(m), or otherwise amend its program, to provide for notification of the operator and any intervenors of a decision not to revoke an exemption.

(ttt) Sections 88.321 and 90.133, or otherwise amend its program to require that no noncoal waste be deposited in a coal refuse pile or impounding structure.

Pennsylvania Response to Required Amendments at 30 CFR 938.16: Pennsylvania submitted revised regulatory provisions for approval and an "effective as" demonstration to address the required amendments. The State also submitted some proposed regulatory changes that are not intended to address any of the required amendments.

Regulatory Changes: The provisions of the Pennsylvania rules that Pennsylvania proposes to revise and/or add are found at 25 Pennsylvania Code. The following is a summary of the regulatory changes being proposed to address program deficiencies noted at 30 CFR 938.16.

Section 86.1, Definitions

The Noncoal Surface Mining and Reclamation Act (NSMRA) is being added to the list for the definition of Acts. When Chapter 86 was promulgated in 1983, noncoal mining was regulated under the authority of the Pennsylvania Surface Mining Conservation and Reclamation Act (PASMCRA). In 1984, the NSMRA was enacted, superseding the role of PASMCRA for noncoal mining. In order to comply with Federal program requirements (and to have an effective regulatory program) relating to incidental extraction of coal under noncoal mining permits, Pennsylvania states that it is necessary to include NSMRA in the applicable Acts. This amendment is intended to address the requirement set forth at 30 CFR 938.16(tt).

Pennsylvania also states that PASMCRA Section 1396.3a(d) includes a reference to Federal SMCRA. This meets the requirement and makes the Pennsylvania program no less effective than the Federal requirements. The text of Section 1396.3a(d) is available online at Regulations.gov.

Pennsylvania states that the standard in Section 86.37 (a)(10) is the "lack of ability or intention to comply with the acts * * *" This inability or unwillingness to comply would be shown through violations of Federal SMCRA or in other states. If the language was that "the applicant did not comply with the acts," then that would be more limiting than the existing language. The existing language allows Pennsylvania to include any violations in determining the "lack of ability or intention to comply with the acts * * *" In addition, the regulation submitted as program amendment PA–156–FOR in March 2010 includes a revision adding the State NSMRA to the definition of "acts" in Section 86.1.

The definition of "owned or controlled" and "owns or controls" is being corrected to include the current reference to the Federal regulations relating to definitions. This addresses Federal regulation revisions that resulted in the definition being placed in a different section of the State program.

Section 86.5, Extraction of Coal Incidental to Noncoal Surface Mining

Section 86.5(m) is amended to add the requirement for the Department to notify interested parties in the case that the Department decides not to revoke an exemption from the coal permitting requirements. This amendment is intended to address the requirement set forth at 30 CFR 938.16(ppp).

Section 86.36, Review of Permit Applications

Section 86.36 is amended to delete the three-year time limitation for the review of an outstanding Federal violation. This amendment is intended to address the requirement set forth at 30 CFR 938.16(rr).

Section 86.37, Criteria for Permit Approval or Denial

Section 86.37(a)(8) is amended to include a reference to the Federal definition of a violation. This amendment was required by the Federal requirement set forth at 30 CFR 938.16(ww). This amendment is also intended to address the deficiencies set forth at 30 CFR 938.16(uu), (vv), and (xx).

Section 86.62, Identification of Interests

Section 86.62(b)(2)(ii) is being amended to correct the reference to the Federal minimum enforcement action. This amendment is intended to address the requirement set forth at 30 CFR 938.16(zz).

Section 86.62(c) is being amended to include the permittee name and address as required information relating to permits for related entities and to clarify that issued permits must be reported as part of an application. This amendment is intended to address the requirement set forth at 30 CFR 938.16(aaa).

Section 86.103(g), Procedure; Section 86.129, Coal Exploration on Areas Designated as Unsuitable for Surface Mining Operations; and Section 86.133, General Requirements

Section 86.103(g) is being added to require that the procedures for processing an assertion of Valid Existing Rights (VER) follow the Federal requirements by incorporating the Federal procedural requirements by reference.

Section 86.129(b) is being amended to provide specific procedures and requirements for permit applications for exploration activities on lands designated as unsuitable for mining. The detailed requirements mirror the

Federal procedures and standards for approval. This amendment also results in the renumbering of current subsections 86.129(b)(1) and 86.129(b)(2).

Section 86.133(f) is being amended to clarify that a permit is required for exploration activities on lands designated as unsuitable for mining.

The amendments to 86.129(b) and 86.133(f) are intended to address the requirements set forth at 30 CFR 938.16(ccc).

Section 86.159, Self-Bonding

Section 86.159(l)(1) is amended to incorporate the language in the Federal regulations regarding the indemnification of self-bonds in the case of a corporate applicant that has a parent company. This amendment is intended to address the requirement set forth at 30 CFR 938.16(nnn).

Section 87.112, Hydrologic Balance: Dams, Ponds, Embankments and Impoundments—Design, Construction and Maintenance and Section 89.111, Large impoundments

Section 87.112(c) is amended to add a requirement to protect miners or the public. Section 87.112(c)(1) is amended to add the required seismic safety factor.

Section 89.111(c) is amended to add a requirement to protect miners or the public. Section 89.11(c)(1) is amended to add the required seismic safety factor.

These amendments are intended to address the requirement set forth at 30 CFR 938.16(iii).

Section 88.321, Disposal of Noncoal Wastes and Section 90.133, Disposal of Noncoal Wastes

Section 88.321 is amended to include all noncoal wastes and to apply the prohibition to impoundments.

Section 90.133 is amended to include all noncoal wastes and to apply the prohibition to impoundments.

These amendments are intended to address the requirements set forth at 30 CFR 938.16(ttt).

Section 90.112, Hydrologic Balance: Dams, Ponds, Embankments and Impoundments—Design, Construction and Maintenance

Section 90.112(c) is amended to add a requirement to protect miners or the public. Section 90.112(c)(2) is amended to match the language in the Federal regulations regarding spillway capacity for large impoundments at coal refuse disposal sites. These amendments are intended to address the requirements set forth at 30 CFR 938.16(jjj).

Required Amendment 30 CFR 938.16(yy): "Effective As" Demonstration

There are no proposed regulation changes being made to sections 86.43, Improvidently Issued Permits and 86.44, Rescission of Improvidently Issued Permits. Instead, Pennsylvania submits that its existing regulations are sufficient to render its program no less effective than the Federal regulations. The submission provides Pennsylvania's reasoning for this assertion as follows:

> The difference between the Federal requirement and Pennsylvania's regulations is related to the phrase 'reason to believe' in the CFR and 'found' in Pennsylvania's regulations. The Federal regulation does not describe how one would have a 'reason to believe.'
>
> An example may help illustrate how this regulation is applied in Pennsylvania. In a case where a permit has been issued based on the presumption that a violation is in the process of being corrected, Pennsylvania uses eFACTS to track the status of the violation. In this example, the permit is conditionally issued, based upon continued compliance. The eFACTS database has functionality where the permit record is linked to the enforcement record for the violation that is in satisfactory progress. If the status of the enforcement record is changed indicating noncompliance, then the permit is automatically flagged for rescission. Another example is a case where a prohibited party may be participating in the mining activities. If Pennsylvania finds (usually through a site inspection) that a forfeited operator is in a position of ownership or control at a mining operation, an investigation is initiated. Pennsylvania has relied on the investigative expertise of the OSM Applicant/Violator System (AVS) investigative staff in many of these cases. If the investigation demonstrates a link, then the permit rescission will ensue.
>
> While having a 'reason to believe' would most likely occur sooner in the process than having a 'finding' and there is an implication of something more formal with a finding, both regulations require the regulatory authority to take an affirmative action to pursue rescission if it is necessary.

Pennsylvania requests that this required amendment be removed based on this assertion.

Remining Financial Guarantees—OSM Partial Disapproval of 1998 Regulatory Amendment found at 30 CFR 938.12(c)(3)

We did not approve a provision of a proposed program amendment that Pennsylvania submitted on December 18, 1998, regarding 25 Pa Code 86.281(e). The last sentence, which stated, "If the actual cost of reclamation by the Department exceeds the amount reserved, additional funds from the Remining Financial Assurance Fund will be used to complete reclamation" was not approved.

Pennsylvania's Response to the OSM Disapproval at 30 CFR 938.12(c)(3)

In its submission of March 17, 2010, Pennsylvania indicates that the following regulatory changes are being made to the remining financial guarantee program to address the portion of 25 Pa Code 86.281(e) that was not approved as documented at 30 CFR 938.12(c)(3).

Section 86.165, Failure To Maintain Proper Bond

Section 86.165(a) is amended to add that an operator's obligation to maintain a proper bond includes the payments required under the Remining Financial Guarantee program. This amendment will allow the enforcement of the payment requirement using consistent procedures.

Section 86.281, Financial Guarantees To Insure Reclamation—General

Section 86.281(c) is amended to provide that the Department will designate a specified amount in the financial guarantees special account as financial assurance for the reclamation obligation of a permit with an approved remining area, rather than reserving a portion of those funds. This change is necessary in light of the conversion to a conventional bonding program. Under conventional bonding, the total reclamation cost is accounted for when determining the bond amount, thus enabling the Department to calculate more precisely the amount of funds that may need to be used to reclaim an approved remining area covered by a remining financial guarantee.

Section 86.281(e) is amended in conjunction with the revision in Section 86.281(c) and to clarify that all of the bonds forfeited (including the Remining Financial Guarantee) on a permit are to be used for reclamation of the mine site (including the remining area). It also is amended to allow, rather than require, the use of additional funds from the Remining Financial Assurance Fund if they are needed to complete the reclamation of the mine site. This change is based primarily on the concept that under conventional bonding, the bond amount posted is the amount required to complete the reclamation. In addition, it provides the Department with flexibility to use money from the Remining Financial Assurance Fund to pay for the necessary reclamation.

Section 86.282, Participation Requirements

Section 86.282(a)(2) is being revised to delete the option of using the ability to obtain a letter of credit as a

demonstration of financial responsibility. Experience in implementing the Remining Financial Guarantee program has shown that the ability to obtain a letter of credit from a bank is not a good test of financial responsibility.

Section 86.283, Procedures

Section 86.283(a)(1) is amended to change the way the amount of the payment is determined as a result of the change to conventional bonding. The deleted language is based on the per-acre bond rate system. The proposed wording is based on the amount of the Remining Financial Guarantee.

Section 86.283(d) is amended to clarify how financial guarantee funds are allocated.

Section 86.283(e) is amended to delete language relating to the process of "bond rollover" that was allowed under the Alternative Bonding System (ABS). The concept of "bond rollover" is not pertinent to conventional bonding.

Section 86.283(f) is being added to reduce the potential risk of insolvency of the Remining Financial Assurance Fund by requiring the replacement of a Remining Financial Guarantee in the event a pollutional discharge occurs at a mine site bonded with a Remining Financial Guarantee.

Section 86.284, Forfeiture

Sections 86.284(a) and (c) are amended to be consistent with the changes made in Sections 86.281(c) and (e).

Guidance Documents: Pennsylvania is seeking to amend its program to include three program directives that will replace a policy statement initially amended into the Pennsylvania program on March 20, 1984, and subsequently revised by program amendments approved on May 15, 1984, July 3, 1984, September 8, 1986, and October 27, 1988. The original policy statement described Pennsylvania's policies regarding Departmental inspections conducted at permitted coal mine operations; citing and enforcing violations found at the permitted operations; and alternative enforcement actions available to the Department in the event violations are not abated in a timely manner. These topics have now been separated and addressed in three Directives identified as 562–4100–301 Compliance/Enforcement Procedures, 562–4100–307 Alternative Enforcement, and 562–3000–102 Coal and Industrial Mineral Mining Inspections. With respect to 562–3000–102, regarding the type and frequency of inspections at coal mine permit sites, only Sections I and II.A, II.B, and II.F are being submitted for inclusion in Pennsylvania's approved coal mining regulatory program. There are no major changes in Departmental policy regarding these three new Directives. The policies are being reorganized, updated, and placed into the Departmental Directives format.

Supporting Documentation: In addition to the documents mentioned above, the State has submitted the following documents for reference purposes only: Guidance Documents 562–3000–802 Coal Mining Applicant Violator System (AVS) Compliance Manual, 562–2000–703 Changes to Licenses, Bonds and Permits, 563–2000–001 Government Financed Construction Contracts, and 562–3000–110 Applicant Violator System (AVS) Inspections; 5600–PM–MR0025, Application Form—Mining License, Contract Operator Approval and Ownership and Control Registration; Sample Permit suspension letter; and, "As Effective As" demonstration for the Inspection Program.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the submission satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Pennsylvania program.

Electronic or Written Comments

If you submit written comments, they should be specific, confined to issues pertinent to the proposed regulations, and explain the reason for any recommended change(s). We appreciate any and all comments, but those most useful and likely to influence decisions on the final regulations will be those that either involve personal experience or include citations to and analyses of SMCRA, its legislative history, its implementing regulations, case law, other pertinent Tribal or Federal laws or regulations, technical literature, or other relevant publications. We cannot ensure that comments received after the close of the comment period (see **DATES**) or sent to an address other than those listed above (see **ADDRESSES**) will be included in the docket for this rulemaking and considered.

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 may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. We will not consider anonymous comments.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., local time April 19, 2011. If you are disabled and need reasonable accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold the hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at a public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If there is only limited interest in participating in a public hearing, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the submission, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Other Laws and Executive Orders Affecting Rulemaking

When a State submits a program amendment to OSM for review, our regulations at 30 CFR 732.17(h) require us to publish a notice in the **Federal Register** indicating receipt of the proposed amendment, its text or a summary of its terms, and an

opportunity for public comment. We conclude our review of the proposed amendment after the close of the public comment period and determine whether the amendment should be approved, approved in part, or not approved. At that time, we will also make the determinations and certifications required by the various laws and executive orders governing the rulemaking process and include them in the final rule.

List of Subjects in 30 CFR Part 938

Intergovernmental relations, Surface mining, Underground mining.

Dated: February 18, 2011.

Thomas D. Shope,

Regional Director, Appalachian Region.

[FR Doc. 2011–7907 Filed 4–1–11; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 424

[CMS–6036–P2]

RIN 0938–AQ57

Medicare Program; Revisions to the Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) Suppliers Safeguards

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would remove the definition of and modify requirements regarding "direct solicitation;" allow DMEPOS suppliers, including DMEPOS competitive bidding program contract suppliers, to contract with licensed agents to provide DMEPOS supplies unless prohibited by State law; remove the requirement for compliance with local zoning laws; and modify certain State licensing requirement exceptions.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on June 3, 2011.

ADDRESSES: In commenting, please refer to file code CMS–6036–P2. 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–6036–P2, P.O. Box 8013, Baltimore, MD 21244–8013.

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–6036–P2, 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) 786–9994 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.

For information on viewing public comments, *see* the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Katie Mucklow Lehman, (410) 786–0537.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://www.regulations.gov.* Follow the search instructions on that Web site to view public comments.

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. General Overview

Medicare services are furnished by two types of entities, providers, and suppliers. At § 400.202, the term "provider" is defined as a hospital, a critical access hospital (CAH), a skilled nursing facility (SNF), a comprehensive outpatient rehabilitation facility (CORF), a home health agency (HHA), or a hospice that has in effect an agreement to participate in Medicare, or a clinic, a rehabilitation agency, or a public health agency that has in effect a similar agreement but only to furnish outpatient physical therapy or speech pathology services, or a community mental health center that has in effect a similar agreement but only to furnish partial hospitalization services. The term "provider" is also defined in sections 1861(u) and 1866(e) of the Social Security Act (the Act).

For purposes of the durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS) supplier standards, the term "supplier" is defined in § 424.57(a) as an entity or individual, including a physician or Part A provider, that sells or rents Part B covered DMEPOS items to Medicare beneficiaries that meet the DMEPOS supplier standards. A supplier that furnishes DMEPOS is one category of supplier. Other supplier categories may include, for example, physicians, nurse practitioners, and physical therapists. If a supplier, such as a physician or physical therapist, also furnishes DMEPOS to a patient, then the supplier is also considered to be a DMEPOS supplier. The term "DMEPOS" encompasses the types of items included in the definition of medical

equipment and supplies in section 1834(j)(5) of the Act.

The term DMEPOS is defined at section 1861(n) of the Act. This definition, in part, excludes from coverage as DMEPOS, items furnished in skilled nursing facilities and hospitals. Also, the term DMEPOS is included in the definition of "medical and other health services" found at section 1861(s)(6) of the Act. Furthermore, the term is defined in § 414.202 as equipment furnished by a supplier or a HHA that—

- Can withstand repeated use;
- Is primarily and customarily used to serve a medical purpose;
- Generally is not useful to an individual in the absence of an illness or injury; and
- Is for use in the home.

Examples of DMEPOS supplies include items such as blood glucose monitors, hospital beds, nebulizers, oxygen delivery systems, and wheelchairs.Prosthetic devices are included in the definition of "medical and other health services" under section 1861(s)(8) of the Act. Prosthetic devices are defined in this section of the Act as "devices (other than dental) which replace all or part of an internal body organ (including colostomy bags and supplies directly related to colostomy care), including replacement of such devices, and including one pair of conventional eyeglasses or contact lenses furnished subsequent to each cataract surgery with insertion of an intraocular lens." Other examples of prosthetic devices include cardiac pacemakers, cochlear implants, electrical continence aids, electrical nerve stimulators, and tracheostomy speaking valves.

Section 1861(s)(9) of the Act provides for the coverage of "leg, arm, back, and neck braces, and artificial legs, arms, and eyes, including replacement if required because of a change in the patient's physical condition." As indicated by section 1834(h)(4)(C) of the Act, these items are often referred to as "orthotics and prosthetics." Under section 1834(h)(4)(B) of the Act, prosthetic devices do not include parenteral and enteral nutrition nutrients and implantable items payable under section 1833(t) of the Act.

Section 1861(s)(5) of the Act includes "surgical dressings, and splints, casts, and other devices used for reduction of fractures and dislocations" as one of the "medical and other health services" that is covered by Medicare. Other items that may be furnished by suppliers would include the following (among others):

- Prescription drugs used in immunosuppressive therapy furnished to an individual who receives an organ transplant for which payment is made under this title, and that are furnished within a certain time period after the date of the transplant procedure as noted at section 1861(s)(2)(J) of the Act.
- Extra-depth shoes with inserts or custom molded shoes with inserts for an individual with diabetes as listed at section 1861(s)(12) of the Act.
- Home dialysis supplies and equipment, self-care home dialysis support services, and institutional dialysis services and supplies included at section 1861(s)(2)(F) of the Act.
- Oral drugs prescribed for use as an anticancer therapeutic agent as specified in section 1861(s)(2)(Q) of the Act.
- Self-administered erythropoietin as described in section 1861(s)(2)(O) of the Act.

B. Statutory Authority

Various sections of the Act and the regulations require providers and suppliers to furnish information concerning the amounts due and the identification of individuals or entities that furnish medical services to beneficiaries before payment can be made. The following is an overview of the sections that grant this authority.

- Sections 1102 and 1871 of the Act provide general authority for the Secretary of Health and Human Services (the Secretary) to prescribe regulations for the efficient administration of the Medicare program. Under this authority, this proposed rule will require the collection of information from providers and suppliers for the purpose of enrolling in the Medicare program and granting privileges to bill the program for health care services furnished to Medicare beneficiaries.
- Section 1834(j)(1)(A) of the Act states that no payment may be made for items furnished by a supplier of medical equipment and supplies unless such supplier obtains (and renews at such intervals as the Secretary may require) a supplier number. In order to obtain a supplier billing number, a supplier must comply with certain supplier standards as identified by the Secretary.

We are authorized to collect information on the Medicare enrollment application (that is, the CMS–855, (Office of Management and Budget (OMB) approval number 0938–0685)) to ensure that correct payments are made to providers and suppliers under the Medicare program as established by Title XVIII of the Act.

In the August 27, 2010 we published a final rule (75 FR 52629) regarding DMEPOS supplier standards which became effective on September 27, 2010.

II. Provisions of the Proposed Regulations

This proposed rule would apply to all DMEPOS suppliers and would revise several of the DMEPOS supplier standards set forth at § 424.57(c).

With the passage of the Affordable Care Act and efforts to focus on waste, fraud, and abuse of our Medicare system, one of our goals has been to reduce expenditures and provide better quality and access to care. This rule is in furtherance of this goal but also addresses the realities that certain suppliers confront as they attempt to provide quality care and maintain access for beneficiaries.

To ensure that DMEPOS suppliers understand how CMS interprets the DMEPOS supplier standards, we are revising certain supplier standards specified in § 424.57(c). Further, we are clarifying our interpretation of these provisions so as to ensure that our approach protects against fraud, waste, and abuse but also preserves access to services for our beneficiaries.

A. Direct Solicitation

The August 27, 2010 final rule implemented an expansion of a provision regarding the "direct solicitation" of Medicare beneficiaries by DMEPOS suppliers in § 424.57(c)(11). The final rule enlarged the scope of the provision beyond prohibiting unsolicited telephone contacts to include in-person contacts, e-mail, and instant messaging. We continue to be concerned about the potential for abuse caused by "direct solicitation" by DMEPOS suppliers and will continue to evaluate DMEPOS supplier marketing practice to ensure our beneficiaries are protected from abusive practices. Based upon our continuing need to evaluate these practices, we believe further investigation is necessary to determine how the agency plans to address this concern. In the interim, we intend to instruct Medicare contractors to continue applying the restrictions on telephone solicitation that were in effect before publication of the August 27, 2010 final rule, instead of implementing the final rule's requirements regarding "direct solicitation."

The original intent of the August 27, 2010 final rule was to limit the circumstances in which DMEPOS suppliers could directly contact beneficiaries. The purpose was to inhibit the direct, coercive, and targeted solicitation of our nation's senior citizens. We are concerned that these solicitations and subsequent purchases can be fraudulent or abusive in nature,

which may result in monetary increases in health care costs and further drains on the Medicare Trust Fund.

Since publication of the August 27, 2010 final rule, we discovered that implementation of the expanded portions of this provision as written is unfeasible. The definition of "direct solicitation" has been criticized as overly broad as it covers some types of marketing activity outside the bounds of what we intended to prohibit under our regulations. Thus, we are proposing to revise § 424.57(a) to remove the definition of "direct solicitation" and revise our regulations at § 424.57(c)(11).

The supplier standard at § 424.57(c)(11) currently states that suppliers must do the following:

> Agree not to make a direct solicitation (as defined in § 424.57(a)) of a Medicare beneficiary unless one or more of the following applies:
>
> (i) The individual has given written permission to the supplier or the ordering physician or nonphysician practitioner to contact them concerning the furnishing of a Medicare-covered item that is to be rented or purchased.
>
> (ii) The supplier has furnished a Medicare-covered item to the individual and the supplier is contacting the individual to coordinate the delivery of the item.
>
> (iii) If the contact concerns the furnishing of a Medicare-covered item other than a covered item already furnished to the individual, the supplier has furnished at least one covered item to the individual during the 15-month period preceding the date on which the supplier makes such contact.

We propose to revise this supplier standard to remove the prohibition against suppliers' "direct solicitation" of patients, which included, but was not limited to, a prohibition on telephone, computer e-mail or instant messaging, or in-person contacts and to revert to restrictions on suppliers effective before publication of the August 27, 2010 final rule. Thus, we are proposing to remove the definition of "direct solicitation" and to revise the supplier standard at § 424.57(c)(11) to read as follows:

> Must agree not to contact a beneficiary by telephone when supplying a Medicare-covered item unless one of the following applies:
>
> (i) The individual has given written permission to the supplier to contact them by telephone concerning the furnishing of a Medicare-covered item that is to be rented or purchased.
>
> (ii) The supplier has furnished a Medicare-covered item to the individual and the supplier is contacting the individual to coordinate the delivery of the item.
>
> (iii) If the contact concerns the furnishing of a Medicare-covered item other than a covered item already furnished to the individual, the supplier has furnished at least one covered item to the individual during the 15-month period preceding the date on which the supplier makes such contact.

Although we are proposing to modify the supplier standard on direct solicitation at § 424.57(c)(11), we will continue to actively monitor the issue of potentially unwanted and unsolicited communications between DMEPOS suppliers and beneficiaries. In the event we believe that we need to take action to limit these types of communications, we will engage in further rulemaking to address this concern.

B. Contractual Arrangement Issues

In the August 27, 2010 final rule, we sought to ensure oversight of DMEPOS suppliers by adding an additional layer of oversight in the form of State law. The absence of express State law in certain areas of DMEPOS suppliers oversight has led to confusion among suppliers as to who they may contract with under our programs. We are seeking to clarify that contracting with an individual or entity for licensed services is permissible in the absence of an express prohibition. In addition, the existing supplier standards permits competitive bidding program contract suppliers to contract for licensed services if such contracting is permitted by the State where the licensed services are performed. As with other suppliers, we believe contract suppliers may contract for licensed services in the absence of an express State prohibition. By making the proposed clarification (that is, it is permissible for suppliers to contract for licensed services in the absence of an express State prohibition), we believe the requirements for contract suppliers are also clarified and that the reference to competitive bidding program contract suppliers in the existing regulation is unnecessary and redundant. Therefore, we are proposing to revise § 424.57(c)(1)(ii) by -(1) removing the reference to contract suppliers; and (2) specifying that a DMEPOS supplier may contract with an individual or other entity to provide the licensed services unless expressly prohibited by State law.

Suppliers are reminded that they must always comply with any applicable Federal and State laws, including, without limitation, those related to fraud and abuse.

C. Local Zoning Requirements

In the August 27, 2010 final rule, we finalized regulations at § 424.57(c)(1)(iii), that required DMEPOS suppliers to comply with all local zoning requirements. The requirement that suppliers comply with local zoning requirements was originally intended to add an additional level of protection to the Medicare program by helping to prevent waste, fraud, and abuse. Under this new zoning compliance requirement, we could ensure DMEPOS suppliers were actually providing goods and services to Medicare beneficiaries in a physical location rather than out of a residence, a practice often prohibited by municipal code zoning requirements.

However, because State and municipal laws vary considerably and are often subject to frequent changes, we believe that the task of ensuring suppliers comply with local zoning laws is best left to the States. Our contractors do not have access to the information needed to verify each and every compliance requirement, nor are they aware of municipal code provisions, including zoning exceptions, needed to complete compliance verification.

Therefore, we are proposing to remove the language in § 424.57(c)(1)(iii) which requires DMEPOS suppliers to comply with local zoning requirements as part of the supplier standards. We note that DMEPOS suppliers would still be required to comply with all applicable Federal and State laws to comply with the supplier standards. Furthermore, suppliers are still required to comply with all applicable local zoning requirements. However, we believe that allowing local municipalities to enforce their zoning requirements is most appropriate since the local municipalities are most familiar with their respective requirements and have jurisdiction over these matters.

D. State Licensing Requirement Exceptions

DMEPOS supplier standards require that DMEPOS suppliers maintain a physical facility on an appropriate site as specified in § 424.57(c)(7)(i). Currently, § 424.57(c)(7)(i)(A) states that DMEPOS suppliers must meet certain square footage requirements. This provision has an exception for State-licensed orthotic and prosthetic professionals providing custom fabricated orthotics or prosthetics in private practice. We are proposing that if a State does not offer licensure for orthotic and prosthetic personnel providing custom fabricated orthotics or prosthetics in private practice, then those non-State licensed suppliers in private practice would also meet the exception. However, if the suppliers' State does offer licensure for this practice area, the exception would apply only to those holding the applicable State license.

Therefore, we propose to modify § 424.57(c)(7)(i)(A) to add a provision

that allows prosthetic and orthotic professionals to qualify for the minimum square footage exception if the State does not offer licensure. We are proposing this modification because we believe that due to the variations in State licensing procedures, comparable practitioners should not be excluded under this rule. However, if a State does offer licensure for such professionals, the orthotics and prosthetics professionals would be required to obtain licensure in order to qualify for the exception to the minimum square footage requirement set forth in § 424.57(c)(7)(i)(A).

In addition, our current regulations at § 424.57(c)(30)(i) state that suppliers must be open to the public a minimum of 30 hour per week. Paragraph (c)(30)(ii)(B) of this section specifies an exception to the minimum hours of operations requirement for licensed non-physician practitioners whose services are defined in section 1861 (p) and (g) of the Act. We note that section 1861(p) and (g) of the Act define certain outpatient physical therapy services and certain outpatient occupational therapy services, respectively. Therefore, to clarify which non-physician practitioners qualify for the minimum hours of operations exception, we are proposing to revise § 424.57(c)(30)(ii)(B) by removing the phrase "licensed non-physician practitioners" and more specifically referring to the applicable sections of the Act. This also should remove any associated confusion that the public has regarding the impact of licensure in meeting this exception.

III. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

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 Statement

We have examined the impacts of this rule as required by Executive Order 12866 on Regulatory Planning and review (September 30, 1993), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999), and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). This proposed rule does not reach the economic threshold and thus is not considered a major rule.

The RFA requires agencies to analyze options for regulatory relief for 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 government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $7.0 to $34.5 million in any 1 year. (For details, see the Small Business Administration's Web site 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* (refer to the 620000 series. There are four categories of provider revenues listed, $7.0, $10.0, $13.5, and $34.5 million or less). Individuals and States are not included in the definition of a small entity.

We are not preparing an analysis for the RFA because the Secretary has determined that this rule will not have a significant economic impact on a substantial number of small entities. We have determined that the RFA is reasonable given that the provisions contained in this proposed rule are primarily procedural and do not require DMEPOS suppliers to incur additional operating costs. We also believe that the regulatory impact of this proposed rule is negligible and not calculable. This proposed rule would revise and clarify our current policy in the DMEPOS supplier standards covered in § 424.57. Therefore, we anticipate a minimal economic impact, if any, on small entities.

As of March 2008, there were 113,154 individual DMEPOS suppliers. However, due to the affiliation of some DMEPOS suppliers with chains, there were only approximately 65,984 unique billing numbers. We believe that approximately 20 percent of the DMEPOS suppliers are located in rural areas.

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. Any language herein impacting rural institutions will only serve to place fewer restrictions on these entities, creating a small burden, if any. We understand that a large number of DMEPOS suppliers fall into this category, however these provisions are very narrow in scope and we expect that legitimate DMEPOS suppliers are already meeting these provisions.

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million. In 2011, that threshold was approximately $136 million. This rule does not mandate expenditures by State, local, or tribal governments, in the aggregate, or by the private sector of $135 million and therefore no analysis is required.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. Since this regulation does not impose any costs on State or local governments, the requirements of E.O. 13132 are not applicable.

We have considered alternatives to all of the provisions.

For instance, to reduce the burden associated with the provision limiting "direct solicitation," but also to establish some standards of conduct and

beneficiary protection, we are relaxing the current rule barring "direct solicitation" and are reverting to the requirements in place prior to the August 27, 2010 final rule. We did consider the alternative of not proceeding with the proposed provisions; however, we believe that the proposed rule is necessary to ensure consistency and clarity with regard to supplier standards. In addition, we are relaxing our standards to enable certain nonphysician practitioners to more easily provide access to care for our beneficiaries by reducing the burden associated with the provisions limiting licensed professionals, zoning requirements, and addressing certain contractual arrangement issues.

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 424

Emergency medical services, Health facilities, Health professionals, Medicare, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services proposed to amend 42 CFR part 424 as set forth below:

PART 424—CONDITIONS FOR MEDICARE PAYMENT

1. The authority citation for part 424 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart D—To Whom Payment Is Ordinarily Made

§ 424.57 Amended

2. Section 424.57 is amended by—

A. Removing the definition of "Direct solicitation" in paragraph (a).

B. Revising paragraph (c)(1)(ii).

C. Removing paragraph (c)(1)(iii).

D. Revising paragraphs (c)(7)(i)(A) and (c)(11).

E. In paragraph (c)(30)(ii)(B), removing the phrase "Licensed non-physician practitioners" and adding the phrase "A physical or occupational therapist" in its place.

The additions and revisions read as follows:

§ 424.57 Special payment rules for items furnished by DMEPOS suppliers and issuance of DMEPOS supplier billing privileges.

(c) * * *

(1) * * *

(ii) *State licensure and regulatory requirements.* If a State requires licensure to furnish certain items or services, a DMEPOS supplier—

(A) Must be licensed to provide the item or service; and

(B) May contract with an individual or other entity to provide the licensed services unless expressly prohibited by State law.

* * * * *

(7) * * *

(i) * * *

(A)(*1*) Except for orthotic and prosthetic personnel described in paragraph (c)(7)(i)(A)(2) of this section, maintains a practice location that is at least 200 square feet beginning—

(*i*) September 27, 2010 for a prospective DMEPOS supplier;

(*ii*) The first day after termination of an expiring lease for an existing DMEPOS supplier with a lease that expires on or after September 27, 2010 and before September 27, 2013; or

(*iii*) September 27, 2013, for an existing DMEPOS supplier with a lease that expires on or after September 27, 2013.

(*2*) Orthotic and prosthetic personnel providing custom fabricated orthotics or prosthetics in private practice do not have to meet the practice location requirements in paragraph(c)(7)(i)(A)(*1*) of this section if the orthotic and prosthetic personnel are—

(i) State-licensed; or

(ii) Practicing in a State that does not offer State licensure for orthotic and prosthetic personnel.

* * * * *

(11) Must agree not to contact a beneficiary by telephone when supplying a Medicare-covered item unless one of the following applies:

(i) The individual has given written permission to the supplier to contact them by telephone concerning the furnishing of a Medicare-covered item that is to be rented or purchased.

(ii) The supplier has furnished a Medicare-covered item to the individual and the supplier is contacting the individual to coordinate the delivery of the item.

(iii) If the contact concerns the furnishing of a Medicare-covered item other than a covered item already furnished to the individual, the supplier has furnished at least one covered item to the individual during the 15-month period preceding the date on which the supplier makes such contact.

* * * * *

Authority: (Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: February 9, 2011.

Donald M. Berwick,

Administrator, Centers for Medicare & Medicaid Services.

Approved: February 25, 2011.

Kathleen Sebelius,

Secretary.

[FR Doc. 2011–7885 Filed 4–1–11; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[WT Docket No. 11–40; FCC 11–29]

Improving Communications Services for Native Nations by Promoting Greater Utilization of Spectrum Over Tribal Lands

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document seeks comment on a range of specific proposals and issues with the objective of promoting greater use of spectrum over unserved and underserved Tribal lands.

DATES: Comments are due on or before May 19, 2011; reply comments are due on or before June 20, 2011.

ADDRESSES: You may submit comments, identified by WT Docket No. 11–40, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Web Site: http://fjallfoss.fcc.gov/ecfs2/.* Follow the instructions for submitting comments.
- *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW., Room TW–A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300

East Hampton Drive, Capitol Heights, MD 20743.

• U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington, DC 20554.

• *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov* or telephone: 202–418–0530 or TTY: 202–418–0432.

• In addition to filing comments with the Secretary, a copy of any PRA comments on the proposed collection requirements contained herein should be submitted to the Federal Communications Commission via e-mail to *PRA@fcc.gov* and to Nicholas A. Fraser, Office of Management and Budget, via e-mail to *nfraser@omb.eop.gov* or fax at 202–395–5167.

FOR FURTHER INFORMATION CONTACT: *Wireless Telecommunications Bureau, Auctions and Spectrum Access Division:* Stephen Johnson, Attorney Advisor, at (202) 418–0660. For additional information concerning the information collection requirements in this document, send an e-mail to *PRA@fcc.gov* or contact Judith B. Herman at 202–518–0214.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Spectrum over Tribal Lands Notice of Proposed Rule Making (*Spectrum over Tribal Lands NPRM*) adopted and released on March 3, 2011, in WT Docket No. 11–40. The complete text of the *Spectrum over Tribal Lands NPRM* is available for public inspection and copying from 8 a.m. to 4:30 p.m. ET Monday through Thursday or from 8 a.m. to 11:30 a.m. ET on Fridays in the FCC Reference Information Center, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The *Spectrum over Tribal Lands NPRM* may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–488–5300, fax 202–488–5563, or you may contact BCPI at its Web site: *http://www.BCPIWEB.com.* When ordering documents from BCPI, please provide the appropriate FCC document number, for example, FCC 11–29. The *Spectrum over Tribal Lands NPRM* is also available on the Internet at the Commission's Web site or by using the search function for WT Docket No. 11–40 on the ECFS Web page at *http://www.fcc.gov/cgb/ecfs/.*

Initial Paperwork Reduction Act of 1995 Analysis

This document contains proposed information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget to comment on the information collection requirements contained in the document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Comments should address: (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 estimates; (c) ways to enhance the quality, utility and clarity of the information collected, and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

I. Synopsis

1. While competitive market forces have spurred robust wireless communications services in many areas, connectivity for federally-recognized American Indian Tribes and Alaska Native Villages (Tribes) and other residents in many Tribal areas remains at significantly lower levels. Although the Commission has adopted a range of programs intended to promote access to wireless radio and other communications services in Tribal areas, its deep concern about the lack of wireless service on Tribal lands is prompting it to consider developing new mechanisms to foster increased access to wireless services for members of Tribes and other residents of underserved Tribal lands.

2. The *Spectrum over Tribal Lands NPRM* seeks comment on a series of proposals that have the objective of promoting greater use of spectrum over Tribal lands. It also seeks comment on what Tribal lands and Wireless Radio Services should be subject to its proposals. The proposals of the *Spectrum over Tribal Lands NPRM* are consistent with the recommendations of the National Broadband Plan, *see* Federal Communications Commission, Connecting America: The National Broadband Plan, 97–98 (rel. Mar. 16, 2010) (*National Broadband Plan*). In the *Spectrum over Tribal Lands NPRM,* the Commission makes five specific proposals. First, it proposes to expand the current Tribal licensing priority to Wireless Radio Services, establishing a licensing priority that would be applicable to licenses for fixed and mobile wireless services and available to qualifying Tribal entities for unserved or underserved Tribal lands, where such Tribal lands are within the geographic area covered by an unassigned Wireless Radio Services license. Second, the *Spectrum over Tribal Lands NPRM* seeks comment on a Tribal proposal to create a formal negotiation process under which Tribes could work with incumbent wireless licensees to bargain in good faith for access to spectrum over unserved or underserved Tribal lands. Under this proposal, a Tribal entity could request initiation of negotiations at any point in the term of a license, provided that the Tribal entity can demonstrate that the licensee failed to negotiate in good faith in connection with a previous attempt by the Tribal entity to negotiate. Third, the *Spectrum over Tribal Lands NPRM* seeks comment on a Tribal proposal that the Commission establish a process by which a qualifying Tribal entity could require a licensee to build or divest a geographic area covering unserved or underserved Tribal lands within its license area. This proposal would be applicable only in those situations where a licensee has already satisfied the construction requirements of a license. Fourth, the *Spectrum over Tribal Lands NPRM* proposes to establish a Tribal lands construction safe harbor for wireless service providers. Under this proposal, a licensee that provides a specified level of service to the Tribal land areas within the geographic area of its license would be deemed to have met its construction obligations for its entire service area. Fifth, the *Spectrum over Tribal Lands NPRM* explores potential modifications to the Commission's existing Tribal lands bidding credit rules. A Tribal lands bidding credit is available to any winning bidder in a Commission spectrum auction that commits to deploying facilities and providing wireless service to qualifying Tribal lands. The *Spectrum over Tribal Lands NPRM* seeks comment on such modifications of the Tribal lands bidding credit rules as the extension of the current 3-year construction deadline.

II. Discussion

3. The Commission seeks comment on a number of suggested approaches to promote improvements in the availability of communications services on Tribal lands, in part by considering Tribal proposals that would provide additional opportunities for greater access by Tribes to spectrum over Tribal lands. Three of the five proposals could create new opportunities for Tribes to gain access to spectrum through Wireless Radio Services licenses. The other two proposals are designed to create new incentives for licensees to deploy wireless services on Tribal lands. The Commission seeks comment on the following: (1) New spectrum access opportunities (a) A proposal to expand the current Tribal licensing priority to Wireless Radio Services, creating opportunities for access to Wireless Radio Services licenses not yet assigned; (b) A Tribal proposal to utilize the power of secondary markets, by creating a formal negotiation process under which Tribes could work with incumbent wireless licensees to bargain in good faith for access to spectrum over unserved or underserved Tribal lands; (c) A Tribal proposal to use spectrum lying fallow through an innovative build-or-divest process that would allow Tribes to build out in areas where licensees have met their construction requirement, but are not serving the Tribal lands within their service areas. (2) Service deployment incentives (a) A proposal to build on the Commission's previous work in the rural context to establish a Tribal lands construction safe harbor for wireless service providers; (b) A proposal to make modifications to the Tribal lands bidding credit.

4. The Commission contemplates extending any programs, if adopted, to federally-recognized American Indian Tribes and Alaska Native Villages and seeks comment on extending eligibility for these programs to entities owned and controlled by such Tribes. In addition, the Commission seeks comment on the appropriate definitions of Tribal lands and on the specific wireless services and Commission licensees to which all of these proposals could apply.

5. In considering several processes by which Tribes could gain access to spectrum over unserved or underserved Tribal lands, the Commission notes that the *National Broadband Plan* suggested that increasing Tribal access to and use of spectrum would create additional opportunities for Tribal communities to obtain broadband access. *See National Broadband Plan,* 97–98. In addition, the proposals the Commission talks about are consistent with the *National Broadband Plan'*s recommendations that the Commission consider extending a Tribal licensing priority to wireless services, developing rules for re-licensing unused spectrum to Tribes, and encouraging use of secondary market mechanisms to facilitate deployment of services to unserved or underserved Tribal areas.

6. These proposals to provide new opportunities for Tribal access to spectrum originated in Tribal submissions relating to development of the *National Broadband Plan* and have been amplified in the context of subsequent proceedings the Commission have initiated to consider the *National Broadband Plan'*s recommendations. The record thus developed indicates that certain Tribal lands have historically been left behind in the construction of infrastructure critical to communications services. More specifically, there are assertions in the record that many providers have not deployed wired services into Tribal lands and that there are instances where wireless providers have failed to build facilities on Tribal lands or have not marketed service to Native Americans. The record also indicates that one path to successful deployment of services on Tribal lands is through Tribal engagement in direct provisioning of services. Some have suggested that underutilized spectrum on Tribal lands may represent an untapped resource that could be key to improving service (including broadband service) to Tribal consumers, but have observed that under current policies Tribes face substantial obstacles obtaining spectrum access.

7. The processes to provide new opportunities for Tribes to seek access to spectrum would take into account conditions that have led to the unavailability of adequate service on some Tribal lands. The Commission seeks comment generally on those conditions and on whether the various approaches that have been suggested may help address them and achieve real benefits for Tribal consumers of wireless services. The proposals for spectrum access in general seek to make underutilized spectrum more available for use in unserved and underserved Tribal lands. In this regard, the Commission notes that proposals for Tribal access to spectrum may facilitate its broad goal of promoting increased use of unused or underutilized spectrum through secondary market mechanisms. Providing for additional mechanisms with respect to spectrum access in licensed services over unserved or underserved Tribal lands could significantly benefit those seeking such access in that there is likely to be a mature eco-system for devices and equipment where spectrum has already been licensed, so that new licensees and new customers would be able to find and purchase existing equipment in the marketplace. Ready availability of devices and equipment can promote faster and more economical buildout and service than would be possible using spectrum where new services are being deployed. The Commission seeks comment on the potential benefits of promoting additional mechanisms for Tribal access to licensed spectrum.

8. The Commission notes that there is not likely to be one answer to the problem of improving the availability of communications services on Tribal lands. Tribes may prefer to work with licensees to speed construction and service on their Tribal lands. The Commission seeks comment on how proposals for Tribal access to spectrum can also provide incentives for construction without direct Tribal access to spectrum. For example, in discussing the possibility of re-licensing spectrum over unserved or underserved Tribal lands through a build-or-divest process, the Commission seeks comment on providing a period during which the licensee could construct and provide service to specific Tribal lands. The Commission invites comment on whether such a process may spur better coordination among Tribes and licensees. In this vein, the Commission also makes proposals to provide new incentives for construction on Tribal lands by non-Tribal Wireless Radio Services licensees. The Commission seeks comment on all these proposed approaches.

A. Tribal Lands and Wireless Radio Services Subject to Proposals

9. The Commission seeks comment on appropriate definitions of Tribal lands for the purposes of the various proposals contained in the *Spectrum over Tribal Lands NPRM* and seeks comment on which Wireless Radio Services should be subject to these proposals.

i. Tribal Lands

10. The Commission seeks comment on how the term Tribal lands or Tribal land should be defined for the purposes of the proposals discussed in the *Spectrum over Tribal Lands NPRM.* The Commission proposes to define Tribal land as any federally recognized Indian tribe's reservation, Pueblo, or Colony, including former reservations in Oklahoma, Alaska Native regions

established pursuant to the Alaska Native Claims Settlement Act and Indian allotments.

ii. Wireless Radio Services Subject to Tribal Lands Programs

11. The Commission proposes that all Wireless Radio Services that are licensed on a geographic area basis would be subject to the proposals discussed in the *Spectrum over Tribal Lands NPRM.* These services include: 700 MHz; Advanced Wireless Services; Narrowband and Broadband Personal Communications Service; Broadband Radio Service and Educational Broadband Service; 2.3 GHz Wireless Communications Service; 1670–1675 MHz; 1392–1395 MHz; 1432–1435 MHz; and 800 MHz and 900 MHz Specialized Mobile Radio. Licensees in the 800 MHz Cellular service are subject to licensing rules that permit third parties to acquire and provide service to unserved areas. 800 MHz Cellular licenses and other site-based services would not be subject to these proposals. The Commission invites comment on whether each of these services should be subject to the proposals. The Commission also seeks comment specifically on whether to subject the Educational Broadband Service to these changes at this time. The Commission asks commenters to address whether it should either proceed with including EBS among the Wireless Radio Services subject to Tribal lands programs or await Commission action addressing Tribal issues in the EBS proceeding. The Commission seeks comment on whether to use different licensing models for certain services, should they be subject to different treatment or exclusion from any of the proposals. Are there other wireless services that should be included?

12. The Commission proposes that, should it decide in the future to allocate or establish new wireless services, those services would be subject to any new rules that might be established in this proceeding. The Commission seeks comment on this proposal.

B. Definitions for Proposals on Tribal Access to Spectrum

13. The *Spectrum over Tribal Lands NPRM* discusses three proposals for processes that would provide new opportunities for Tribes to gain access to spectrum through Wireless Radio Services licenses. In particular the Commission proposes a Tribal licensing priority and discusses Tribal suggestions for additional processes that could provide a path by which Tribal entities could gain access to spectrum licenses with respect to geographic areas covering their Tribal lands that are unserved or underserved as these terms are defined for these purposes.

14. The Commission addresses definitions to assist in the potential implementation of all three processes for (1) qualifying Tribal entities eligible for these spectrum access opportunities, (2) unserved and underserved Tribal lands, and (3) the boundaries of the geographic area within a license to which the proposals would apply.

i. Eligibility and Legal Authority for Tribal Access to Spectrum Opportunities

15. The Commission proposes that a Tribal licensing priority should be available to qualifying Tribal entities as it defines them and seeks comment on the application of this definition to the Tribal proposals for spectrum access processes. A qualifying Tribal entity for these purposes would be an entity designated by the Tribal government or governments having jurisdiction over particular Tribal land for which the spectrum access is sought. The Commission proposes that only the following may be designated as qualifying Tribal entities: (1) Tribes; (2) tribal consortia; (3) entities that are more than 50 percent owned and controlled by a Tribe or Tribes. This is consistent with Commission rules governing the Tribal priority in the broadcast radio licensing context. The Commission proposes to use principles of control similar to the principles set forth in its part 1 rules on attribution for purposes of determining eligibility for designated entity benefits. The Commission seeks comment on this definition. In particular, the Commission seeks comment on whether it should limit eligibility for these programs to the Tribal entities that have a geographical connection to the area for which they seek spectrum access.

16. In proposing these eligibility requirements, the Commission recognizes that the legal foundation for providing opportunities to Tribes for access to spectrum is based on the federal government's trust relationship with Tribal governments.

17. The unique trust relationship between the Commission and Tribes provides a legal basis for the existing Tribal priority for broadcast radio licenses. The Commission believes that this trust relationship likewise justifies extension of the Tribal priority to wireless licenses and seeks comment on its application to the other potential spectrum access opportunities. Establishing processes that would provide Tribes with increased opportunities for access to spectrum over unserved or underserved Tribal lands would also be consistent with a number of public interest objectives with regard to Tribal lands. The Commission also believes that these proposals would satisfy the relevant constitutional analysis because any proposed benefits would be granted to Tribes and their members not as a discrete racial group, but, rather, as members of quasi-sovereign tribal entities whose lives and activities are governed by the Bureau of Indian Affairs in a unique fashion.

18. While the Commission utilizes different processes to apply the requirements of section 307(b) of the Communications Act in licensing various broadcast services and in licensing Wireless Radio Services, both the existing Tribal priority and the spectrum access proposals the Commission discusses are intended to achieve similar goals of extending service to those on Tribal lands. The Commission seeks comment on the constitutional and statutory bases for adoption of a Tribal priority for Wireless Radio Service licenses. The Commission also invites comment on whether these authorities would support adoption of the Tribal proposals to provide new spectrum access opportunities and whether any other constitutional or statutory considerations should be addressed in its analysis of those proposals.

19. The Commission proposes to base any determinations of control using the existing attribution rules that it currently applies in the context of making determinations concerning eligibility for designated entity benefits for licenses assigned by auction as provided in part 1, subpart Q of the Commission's rules. Using policies that are already being utilized in the part 1, subpart Q attribution rules for purposes of determining eligibility for a Tribal priority for Wireless Radio Service licenses will ensure that applicants and licensees will be subject to uniform requirements for the calculation of ownership, control and affiliation interests. The Commission seeks comment on whether attribution rules for determining eligibility as a qualifying Tribal entity should take into account agreements between Tribal entities and non-Tribal entities that may give rise to attribution of interests under the existing subpart Q rules, such as management and service agreements. Should there be any exclusions provided in the attribution rules for this purpose based upon any unique ownership and control issues associated with Tribal governments and Tribal entities? The Commission seeks

comment on this approach for its proposed Tribal priority as well as in connection with the Tribal proposals for other spectrum access processes.

ii. Defining Unserved or Underserved Tribal Lands

20. The Commission proposes that a Tribal priority would be available only with respect to Tribal land areas that are unserved or underserved and seeks comment on using the same definition in considering the Tribal proposals for spectrum access opportunities. The Commission proposes to define as unserved or underserved those Tribal lands where there is Wireless Radio Services coverage to not more than 65 percent of the population of the Tribal land area. The Commission invites comment on this proposed definition and seeks comment on alternatives.

21. Each of the proposals for spectrum access opportunities is intended to create greater incentives for wireless deployment in such unserved or underserved areas. The Commission believes that defining as unserved or underserved those Tribal lands with Wireless Radio Services coverage to not more than 65 percent of the population will identify the places most in need of additional efforts to expand the availability of wireless services. The Commission notes that for purposes of its Tribal Land Bidding Credit program, it uses a threshold wireline telephone subscribership rate of 85 percent. Should the Commission define unserved or underserved as coverage by Wireless Radio Services to less than or equal to 85 percent of the population as used in the context of its Tribal Land Bidding Credit program? Alternatively should the Commission define unserved or underserved as coverage that is a specified percentage below some other standard of coverage? The Commission seeks comment on these alternatives for defining unserved or underserved.

22. Some wireless services are licensed on a site-specific basis, such as 800 MHz cellular. Such site-based licensees are required to meet applicable technical standards by maintaining certain levels of signal strength throughout their entire service contours. Thus, unserved or underserved areas do not arise within the contours of licenses that are authorized on a site-specific basis. For this reason, the Tribal priority and other spectrum access opportunities would not apply to wireless services that are licensed on a site-specific basis.

iii. Defining Geographic Area for Which Tribal Access to Spectrum Opportunities May Be Available

23. The Commission proposes that a Tribal priority would be available with respect to a geographic area defined by the boundaries of the Tribal land associated with the Tribal entity seeking the access. The Commission seeks comment on this proposal. More specifically, the Commission seeks comment on the interrelationship of these proposed boundaries with its proposal that the Tribal priority would be available only with respect to Tribal land areas that are unserved or underserved. To the extent that there is some coverage within the Tribal land area, should the boundaries for the Tribal spectrum access be defined by the extent of that service? The Commission also seeks comment on applying this definition to the Tribal proposals for spectrum access opportunities.

24. The Commission also seeks comment on whether the boundaries of the geographic area for a Tribal priority should include unserved or underserved near-reservation areas and other areas beyond the boundaries of Tribal lands. Would this assist in making wireless services available to Tribal members that may reside in areas just outside of a tribal reservation? If such near-reservation areas were included, the Commission proposes that any such areas would be comprised of U.S. Census block areas. Using Census block boundaries will provide more certainty for all parties and will allow the Commission to more easily administer such licenses in its existing licensing systems. Should the Commission impose a limit on the amount of such near-Tribal land areas that might be included? For instance, should such areas be limited to comprising 25 percent or less of the total geographic area for which spectrum access is sought? The Commission seeks comment on whether the Commission should include unserved or underserved near-reservation areas in defining the relevant geographic area for the Tribal proposals for spectrum access processes.

25. Finally, the Commission seeks comment on whether carving out a geographic area based on its proposed boundaries would give rise to coordination and interference issues with neighboring licensees. How can the Commission address any technical, interference or other issues that may be raised by this proposal?

C. Tribal Licensing Priority for Unassigned Wireless Radio Services Licenses

26. The Commission proposes to establish a licensing priority that would be applicable to licenses for fixed and mobile wireless services and available to qualifying Tribal entities for unserved or underserved Tribal lands where such Tribal lands are within the geographic area covered by an unassigned Wireless Radio Services license. In offering this proposal the Commission notes the significant record support for an expanded Tribal spectrum priority, which the *National Broadband Plan* recommended for the consideration of the Commission. In making this proposal, the Commission draws upon its recent adoption of a Tribal priority in the context of licensing of broadcast radio services. Under that policy, federally recognized Tribes, Tribal consortia, and entities that are 51 percent or more owned by a Tribe or Tribes, are entitled to a priority under section 307(b) of the Communications Act of 1934, as amended, when proposing FM allotments, as well as applying for AM and noncommercial educational FM stations, that would primarily serve Tribal lands. Where a federally recognized American Indian Tribe or Alaska Native Village entity applies for or proposes a broadcast station or allotment and meets the requirements for a Tribal priority, its application or proposal in most cases will receive a dispositive preference under section 307(b), and thus may prevail based on a threshold determination under that statutory provision. In the case of a proposal for new AM commercial service, for example, such a dispositive preference would result in the application proceeding to processing without competitive bidding. In the case of proposals for new noncommercial educational FM stations, the dispositive preference would result in the tentative selection of the applicant receiving the Tribal priority, without a fair distribution analysis or point system comparison.

27. The Commission seeks comment on whether making available a Tribal priority would facilitate access by Tribal entities to spectrum over Tribal lands. The Commission also seeks comment on whether any aspect of its proposed definitions should be modified specifically with respect to their application to its proposed Tribal licensing priority.

28. The Commission seeks comment on how to address a number of issues with respect to implementation of such

a Tribal priority in the context of Wireless Radio Services licenses.

i. Process and Licensing Framework for Awarding Tribal Priority

29. The Commission anticipates that it would establish a process for licensing wireless services pursuant to a Tribal priority that would generally avoid the opportunity for mutually exclusive applications. While section 309(j)(1) of the Communications Act requires the Commission to use auctions whenever it accepts mutually exclusive applications for an initial license, section 309(j)(6)(E) provides that the auction requirement of section 309(j)(1) does not relieve the Commission of the obligation in the public interest to use various means to avoid mutual exclusivity. Section 309(j)(6)(E) provides that the Commission may use engineering solutions, negotiation, threshold qualifications, service regulations and other means to avoid mutual exclusivity in licensing processes where it determines that it is in the public interest to do so. Because the Commission anticipates that there generally would be only a single qualifying Tribal entity with respect to any particular Tribal land area, the Commission believes that the public interest would be served by establishing a licensing scheme that would avoid mutually exclusive applications. Should mutually exclusive applications from Tribal entities be accepted under any Tribal priority licensing process that the Commission establishes, the Commission proposes to resolve them through competitive bidding. The Commission seeks comment on this analysis.

30. The Commission seeks comment on alternative ways to provide opportunities for eligible Tribal entities to file applications seeking a Tribal priority for licenses covering specific Tribal lands within geographic licensing areas in established Wireless Radio Services. One approach would be to provide a Tribal priority application window after the Commission has released a Public Notice proposing to offer specific initial licenses in a spectrum auction but before the window for filing auction applications opens. Alternatively, the Commission could provide a Tribal priority application window prior to any announcement of specific licenses to be offered in a spectrum auction. Assuming there is only one Tribal priority application accepted for a particular license, the portion of the license covering the Tribal land would not be offered at auction. The Commission invites comment on the relative merits and drawbacks of these alternative application approaches. In light of data regarding limited access to communications services in Tribal areas, the Commission anticipates that, under either approach, it would undertake outreach efforts, in addition to Public Notices, in order to widely disseminate information and maximize opportunities for Tribes to benefit from any new licensing priority program.

31. The Commission anticipates that if a Tribal priority is awarded, the Tribal entity will have to meet all legal, technical and financial requirements to qualify for a license in the specific Wireless Radio Service. In addition, the Commission proposes that all construction and other conditions of the relevant license would apply as if the license were awarded through the process normally applicable for the specific service. The Commission seeks comment on these proposals.

D. Tribal Proposals for Processes To Provide Access to Spectrum Licensed to Third Parties

32. The relatively low rate of wireless coverage on Tribal lands suggests that various Commission methods of promoting the deployment of wireless services including service-specific construction requirements and the secondary markets mechanisms may not be sufficient to provide the incentives necessary to ensure the provision of wireless services to Tribal lands. These proposals have been crafted to address the unique communications-related circumstances faced by those living and working on unserved and underserved Tribal lands, and do not more generally address issues of spectrum access and secondary markets beyond Tribal lands. The Commission seeks any additional information that would help us better understand and address the problems faced by those on Tribal lands in obtaining access to wireless services, and seek comment on all aspects of these proposals. The Commission also invites license holders to comment on reasons that they may not be taking advantage of existing regulatory provisions that enable them to allow other parties to access and use spectrum in areas under their license that they do not expect to use themselves.

33. The Commission discusses two proposals offered by Tribes for processes that could provide new opportunities for Tribal access to spectrum for fixed and mobile wireless services that is licensed to third parties. The first of these proposals seeks to address the challenges that Tribes have alleged they have had in encouraging wireless licensees to negotiate potential secondary market transactions involving their licensed spectrum over Tribal lands. It would create a formal negotiation process through which a Tribe that had been refused good faith negotiations regarding a secondary markets transaction within a wireless licensee's geographic area of license could require a licensee to enter into such negotiations. The second proposal aims to combat the hurdle some Tribes have encountered where wireless licensees holding spectrum over Tribal lands have met their construction requirements, but have not built out networks to provide service to Tribal lands within their geographic area of license. It would enable a Tribe to require the licensee either to build or to divest spectrum in the relevant geographic area at any time after the licensee has satisfied the construction requirements applicable to the particular license. The Commission is seeking comment on making the two opportunities it described here available only to qualifying Tribal entities with respect to geographic areas covering Tribal lands that are unserved or underserved. The Commission seeks comment on this proposed application of the definition.

34. One way to implement each of these approaches would be for the qualifying Tribal entities to initiate the specific process for seeking spectrum access with respect to assigned licenses for Wireless Radio Services by the filing of a Notice of Intent with the Commission and service of the Notice of Intent on the licensee. Such a Notice of Intent would have to provide the necessary information to demonstrate the prerequisites for the specific process sought to be initiated. The Commission would need information indicating that the filer is a qualifying Tribal entity, as well as information demonstrating that the relevant Tribal land is unserved or underserved in accordance with the definition and information defining the geographic boundaries of the area over which spectrum access is sought. The Commission seeks comment on using such a Notice of Intent. The Commission also seeks comment on providing the existing licensee with thirty days to provide information to rebut the assertion that the Tribal land in question is unserved or underserved. Would such a process for determining whether a Tribal land area meets this service threshold be sufficient?

35. The Commission seeks comment on a number of specific issues with respect to implementation of the Tribal proposals for providing spectrum access opportunities through good faith

negotiations and build-or-divest processes.

i. Good Faith Negotiations

36. The record contains Tribal proposals that the Commission adopt additional mechanisms for taking advantage of the secondary market opportunities to improve service deployment. The proposal for a good faith negotiation process is intended to address difficulties that Tribes have detailed in securing access to spectrum rights held by existing wireless licensees whose licenses cover Tribal land areas. Tribal entities have long argued that they would provide coverage to unserved and underserved Tribal lands if they could get access to the spectrum, but that they have encountered a number of difficulties in initiating and completing such negotiations.

37. Under the proposed process, Tribes could leverage existing secondary market post-licensing opportunities to secure access to spectrum over unserved and underserved Tribal lands through license partitioning or through spectrum leasing. These secondary market opportunities could involve leasing all or part of a licensee's spectrum rights or partitioning a geographic portion of a license for assignment to another entity. Robust and efficient secondary markets increase the availability of unused or unneeded spectrum capacity and may enable new users to deploy services where, for a number of possible reasons, the original licensee did not. The Commission seeks comment on whether such a good faith negotiations process would help provide Tribes with access to spectrum licensed to other parties and lead to better availability of Wireless Radio Services for consumers on Tribal lands.

38. One way to implement such a proposal would be to create a formal negotiation process that would enable a qualifying Tribal entity to require a licensee to enter into good faith negotiations regarding a secondary markets transaction with respect to any geographic portion of the licensee's license area that is covered by unserved or underserved Tribal lands. The Commission seeks comment on whether, if adopted, this process would permit a qualifying Tribal entity to file a Notice of Intent to initiate a good faith negotiations process at any time during the license term, provided that the filing Tribal entity can demonstrate that in connection with a previous attempt by the Tribe to negotiate, the licensee failed to negotiate in good faith. The Commission seeks comment generally on such a process and more specifically on whether modifications of any aspect of the generally applicable proposed definitions should be made. The Commission also seeks comment on requiring that a Notice of Intent initiating this process would have to include information about a previous negotiation attempt in which the Tribal entity believes that the licensee did not bargain in good faith. Would such a requirement raise issues regarding confidential or proprietary information? If so, what protections could the Commission establish to address those issues?

39. The Commission also seeks comment on what the contours of any formal negotiating process, if adopted, should be. Should the Commission adopt standards similar to those currently employed by the Commission in the context of retransmission consent? Under such a standard, to implement the good faith negotiation requirement, the Commission could use a two-part test for good faith. *See* Implementation of Satellite Home Viewer Improvement Act of 1999, Retransmission Consent Issues: Good Faith Negotiation and Exclusivity, *First Report and Order,* 65 FR 15559, March 23, 2000, amended on reconsideration in part by Implementation of Satellite Home Viewer Improvement Act of 1999, Retransmission Consent Issues: Good Faith Negotiation and Exclusivity, *Order on Reconsideration,* 66 FR 48219, September 19, 2001. The first part of the test would consist of a brief, objective list of negotiations standards. Such standards could include: First, a licensee may not refuse to negotiate with a Tribal entity whose Tribal lands are within its service area but to which it has not deployed service. Second, a licensee must appoint a negotiating representative with authority to bargain on partitioning and spectrum leasing issues. Third, a licensee must agree to meet at reasonable times and locations and cannot act in a manner that would unduly delay the course of negotiations. Fourth, a licensee may not put forth a single, unilateral proposal. By this, the Commission envisions that a licensee would have to be willing to consider and discuss alternative terms or counter-proposals, as it would appear that "take it or leave it" bargaining without consideration of reasonable alternatives could be found to be inconsistent with an affirmative obligation to negotiate in good faith. Fifth, a Tribal entity, in responding to an offer proposed by a licensee, must provide considered reasons for rejecting any aspect of the licensee's offer. Finally, if an agreement is reached, a licensee must agree to execute a written agreement that sets forth the full agreement, between the licensee and the Tribal entity. The Commission seeks comment on this potential approach should a formal negotiation process be adopted.

40. The Commission seeks comment on whether a proposed good faith test should include a totality of the circumstances standard. This approach would enable a Tribal entity to present facts to the Commission which, even though they do not allege a violation of the objective standards, given the totality of the circumstances constitute a failure to negotiate in good faith. The complainant would bear the burden of proof when making a good faith complaint.

41. The Commission seeks comment on the merits and drawbacks of it using such a good faith test for the proposed process. Should good faith negotiations be concluded within any specified time period? If so, what would be a reasonable time period? Should there be a requirement that a Tribe availing itself of the process make a showing that it has the financial wherewithal to fulfill its end of the proposed transaction?

42. The Commission also seeks comment on whether there are incentives the Commission could provide for conclusion of a license partitioning or spectrum leasing transaction. For instance, would it be beneficial to such a process if the Commission were to provide any licensee that leases spectrum rights to a qualifying Tribal entity with additional credit reflecting such coverage toward meeting its overall construction requirement for the license? Are there other incentives that might be beneficial?

43. Finally, the Commission seeks comment on whether any partitioning or spectrum leasing transaction that may result from a good faith negotiations process would be subject to all of the Commission's rules applicable to such transactions as well as all of the rules applicable to the relevant Wireless Radio Service, including rules regarding construction requirements.

ii. Build-or-Divest Process

44. The record also reflects Tribal proposals that the Commission establish a process by which a qualifying Tribal entity could require a licensee to build or divest a geographic area covering unserved or underserved Tribal lands within its license area. The notion is that such a process might be available where an existing licensee has satisfied the applicable construction requirements for the license yet Tribal

land areas remain unserved or underserved under the Commission's proposed definition. This proposal is intended to provide Tribal governments with a process under which they could expedite service to their Tribal lands. The Commission seeks comment on the efficacy of this approach.

45. The Commission seeks comment on the best way to implement such a process if adopted. For example, the Commission seeks comment on whether, if adopted, this process would permit a qualifying Tribal Entity to file a Notice of Intent to initiate a build-or-divest process only after the relevant licensee had met the applicable construction requirement. Would such a Notice of Intent for this purpose include, in addition to the information already discussed, the date on which the Commission accepted the licensee's notice of construction demonstrating that it has satisfied its final construction requirement for the license in which the unserved or underserved Tribal land is located? The Commission also seeks comment on what information should be included in a Notice of Intent filed in this context.

46. The Commission seeks comment on whether, after the filing of a Notice of Intent by a Tribe initiating a build-or-divest process, if adopted, the licensee should have to indicate whether it would agree (a) to extend coverage to the Tribal land(s), or (b) relinquish its authorization for the unserved or underserved Tribal land within the geographic area of its license. Should the authorization of any licensee that chooses to extend coverage and fails to do so within the time allowed be terminated with respect to the geographic area covered by the unserved or underserved Tribal land? The Commission also seeks comment on whether the establishment of a build-or divest process would promote coverage in these areas, and whether the rule should be prospective only or apply to licenses already granted as well.

47. The Commission seeks comment on the particular construction or performance requirements that might be imposed on any licensee that opts for extending coverage to unserved or underserved Tribal lands under the build-or-divest process. The Commission would want to establish performance criteria that would reasonably result in timely and meaningful service coverage to unserved or underserved tribal areas, but that also acknowledges the difficulties of deploying facilities in often remote and rural areas.

48. In line with the Commission's goal of expediting wireless coverage to unserved and underserved communities, the Commission seeks comment on a requirement that a licensee that opts to provide coverage under the build-or-divest process must provide the specified level of service within three years of the filing of a Notice of Intent. A relatively short period would promote the availability of service to residents of the affected tribal area. Alternatively, given the wide variety of geographic sizes and population distributions of Tribal lands nationwide, the Commission seeks comment on whether the Commission should adapt the coverage requirements and deadlines to the particular tribal population or geography. Are there any particular special circumstances that, if encountered, would merit a longer time period? Would a shorter time period be appropriate in particular situations? Are there any measures the Commission should consider that might facilitate coverage to Tribal lands under the build-or-divest process?

49. The Commission also seeks comment on the technical rules to which a license acquired through the build-or-divest process might be subject. If the Commission were to determine that the Commission should apply the additional tribal construction requirement to current licensees, the Commission seeks comment on whether the existing technical rules of such services are sufficient to protect the incumbent and the Tribal entity from interference, or whether there should be additional technical protections. Depending on the size and geography of the particular Tribal land, as well as the proximity of Tribal and non-Tribal sites to the shared boundary and to populated areas of the other licensee's geographic area, it may be possible that existing technical rules are insufficient to allow incumbent and Tribal licensees to operate effectively. Existing technical rules may, in some circumstances, unnecessarily restrict the types of services that may be deployed in a given Tribal area. The Commission seeks comment regarding the specific technical rights and protections that should be applied. The Commission seeks comment on specific signal strengths to be applied at the shared boundary, and other provisions that will protect the incumbent and tribal licensee while also permitting both to serve their licensed areas effectively. The Commission proposes that, for future wireless services, the Commission should address these technical issues in each service-specific rulemaking proceeding. The Commission invites commenters to address these technical issues with respect to specific Wireless Radio Services and particular Tribal land areas. The Commission also requests that commenters identify those technical issues or criteria that they believe would apply to Tribal areas universally, or that should be applied to particular tribal areas regardless of the wireless service involved.

50. Under the Tribal proposal for a build-or-divest process, the geographic area covered by the unserved or underserved Tribal land would become available for licensing to the qualifying Tribal entity filing the Notice of Intent if a licensee opts to relinquish its authorization rather than extend coverage or if it opts to extend coverage and fails to do so within the time allowed. The Commission seeks comment on requiring a Tribal entity to submit an application for the available authorization to demonstrate its qualifications to hold a Commission license.

51. The Commission seeks comment on applying construction requirements should an unserved Tribal geographic area be relicensed to a Tribal entity and asks how to define those requirements. The Commission seeks comment on whether it should require a Tribal licensee to provide the level of service that would otherwise be required of a licensee opting to extend coverage within three years of the grant of its license covering the Tribal land areas. The Commission seeks comment on possible alternatives that might take into account these and any relevant factors related to a new Tribal licensee's ability to deploy service.

52. The Commission also seeks comment on whether to allow transfer of or lease of spectrum rights with respect to all or part of the area licensed to the Tribal entity through the build-or-divest process. Should the Commission allow a qualified Tribal licensee to enter into any secondary market transaction involving any portion of the licensed area to a third party that does not meet the eligibility standards for a qualifying Tribal applicant? Should the Commission take any action in this regard to promote the objective of Tribal self-provisioning?

53. In the event that commenters support the ability by the Tribal licensee to enter into secondary market transactions with respect to all or a portion of its licensed area, the Commission requests that commenters specify the conditions that would apply. For example, should the Commission permit the licensee to transfer all or part of its license once it has fulfilled its required service and construction

obligations, or otherwise ensured that a certain level of service is being provided over Tribal lands? Would it be appropriate to allow secondary market transactions if the Tribal licensee indicates it is unlikely that it will be able to fulfill its construction obligations and that a third party is willing to take the license and complete construction by the appropriate deadline?

54. The Commission seeks comment on the effect of any such requirements on the ability of Tribal licensees to enter into contracts with third parties to build and operate wireless systems. Such contracts may be the most effective way for Tribes to obtain access to industry knowledge and equipment financing. The Commission seeks comment on whether and to what extent the Commission should consider leasing arrangements between qualifying Tribal entities and non-Tribal entities to confer control that would disqualify the Tribal entity.

E. Tribal Lands Construction Safe Harbor

55. The Commission proposes to establish for licenses in the Wireless Radio Services a Tribal lands construction safe harbor provision. Under this proposal, a licensee that provides a specified level of service to the Tribal land areas within the geographic area of its license would be deemed to have met its construction obligations for its entire service area. The Commission seeks comment on this proposal. In particular would such a safe harbor create an incentive for licensees to serve Tribal lands by providing an alternative method to meet construction obligations with respect to any license that includes Tribal lands within the geographic area?

56. This proposed Tribal lands construction safe harbor would resemble current Commission rules that permit some licensees in some services to satisfy their construction requirements by providing service to rural areas. For example, the Commission's rules provide that a Broadband Radio Service or Educational Broadband Service licensee has met safe harbor by, among other things, deploying a certain level of service to rural areas. For mobile service, this level is defined as coverage being deployed to at least 75 percent of the geographic area of at least 30 percent of the rural areas within the licensed area.

57. The Commission seeks comment on the specific construction requirement that must be met with respect to Tribal lands within the geographic area of a license in order to qualify for the proposed safe harbor. Specifically, for licenses with a substantial service requirement, the Commission seeks comment on providing a Tribal lands safe harbor for satisfaction of this requirement to a licensee that deploys coverage to at least 75 percent of the geographic area of the Tribal lands within the geographic area of its license area. The Commission seeks comment on what requirements to impose with respect to licenses that are subject to other forms of construction requirements. What other specific requirements should a Tribal lands safe harbor have? If such a safe harbor is established, what safeguards should be adopted to prevent licensees from exploiting the safe harbor? For example, should a licensee be permitted to avail itself of the proposed safe harbor if the tribal area does not meet a minimum geographic size or have a population that is at least ten percent of the area or population of the market as a whole?

58. The Commission also seeks comment on whether it should apply a construction multiplier rather than, or in addition to, a safe harbor as an incentive to serve Tribal lands. A licensee would be permitted to count the population or geographic coverage it has deployed to Tribal lands multiplied by a set percentage towards satisfaction of the licensee's construction requirement for the entire license area. The Commission seeks comment on the appropriate construction multiplier that would serve as an incentive for Tribal area buildout, as well as ensure adequate construction in non-Tribal areas of a licensed geographic area.

F. Potential Modification of Tribal Lands Bidding Credit Program

59. In a continuing effort to provide greater economic incentives for bringing service to Tribal lands, the Commission also seeks to explore potential modifications to its existing Tribal lands bidding credit rules. This is consistent with the record and with the recommendations of the *National Broadband Plan.* A Tribal lands bidding credit (TLBC) is available to any winning bidder in a Commission auction that commits to deploying facilities and providing wireless services to qualifying Tribal lands. Qualifying Tribal lands are defined as federally-recognized tribal areas that are either unserved by any telecommunications carrier or that have a telephone service penetration rate of 85 percent or less. The Tribal lands bidding credit is in addition to any other bidding credit for which the applicant qualifies, such as the small business bidding credit.

60. A winning bidder that meets the requirements for a TLBC is entitled to the amount of $500,000 for the first 200 square miles (518 square kilometers) of qualifying Tribal lands, and $2,500 for each additional square mile (2.590 square kilometers) above the initial 200 square miles (518 square kilometers) of qualifying Tribal lands. The TLBC is capped, depending on the amount of the winning bid: for winning bids less than or equal to $1 million, the cap is 50% of the amount bid; for winning bids between $1 million and $2 million, the cap is $500,000; and for winning bids in excess of $2 million, the cap is 35% of the amount bid.

61. A licensee receiving a TLBC is subject to a construction performance requirement. The licensee has three years from the grant of its license to construct and operate a wireless system to cover at least 75 percent of the tribal population within its market. At the end of this three-year period, the licensee must notify the Commission that it has met the 75 percent buildout requirement with regard to the Tribal lands for which the credit was awarded. If a licensee fails to make an adequate showing that it has met the 75 percent benchmark, it will be required to repay the bidding credit, plus interest, within 30 days after the conclusion of the construction period.

62. One possibility would be to extend the TLBC program's current 3-year construction deadline. Such an extension would have the advantage of providing additional time for a licensee to construct and operate a wireless system. However, it could also delay deployment of service to those residents of Tribal lands who are intended to benefit from the TLBC. The Commission seeks comment on this possible extension of the construction deadline.

63. The Commission could also consider extending the time frame to complete the certification process. This might encourage more bidders to seek the credit than would otherwise do so. The Commission invites specific comment on these proposals and their potential costs and benefits. The Commission also encourages commenters to offer any additional proposals that they may have for improving the TLBC program.

64. Are there other possible changes the Commission could make to the TLBC program that may more effectively promote service to Tribal lands? For instance, are there ways in which to promote coordination between the TLBC recipient and the relevant Tribal government that could provide additional incentives for service deployment?

III. Procedural Matters

A. Ex Parte Rules—Permit-But-Disclose

65. This is a permit-but-disclose notice and comment rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed pursuant to the Commission's rules.

B. Initial Regulatory Flexibility Analysis

66. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the *Spectrum over Tribal Lands NPRM.* Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the first page of the *Spectrum over Tribal Lands NPRM* summary. The Commission will send a copy of the *Spectrum over Tribal Lands NPRM,* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the *Spectrum over Tribal Lands NPRM* and IRFA (or summaries thereof) will be published in the **Federal Register.**

i. Need for, and Objectives of, the Proposed Rules

67. The *Spectrum over Tribal Lands NPRM* seeks comment on proposals that would promote increased use of spectrum over Tribal lands. The proposals in the *Spectrum over Tribal Lands NPRM* are intended to increase availability of wireless communications over Tribal lands. The Commission has worked closely with federally-recognized American Indian Tribes and Alaska Native Villages (Tribes) from around the country on developing the proposals in the *Spectrum over Tribal Lands NPRM.*

68. The *Spectrum over Tribal Lands NPRM* contains five substantive proposals. First, the *Spectrum over Tribal Lands NPRM* proposes to expand the Commission's current Tribal licensing priority for broadcast licenses to certain Wireless Radio Services, creating opportunities for access to Wireless Radio Services licenses not yet assigned. Under the current Tribal priority, federally-recognized Tribes, Tribal consortia, and entities that are more than 50 percent owned by a Tribe or Tribes are entitled to a priority relative to non-Tribal entities when proposing FM allotments, as well as applying for AM and noncommercial educational FM stations, that would primarily serve Tribal lands. As envisioned in the *Spectrum over Tribal Lands NPRM,* an extension of this Tribal priority to the licensing of wireless services could provide a path by which Tribal entities could gain access to licensed spectrum licenses covering their unserved and underserved Tribal lands.

69. Second, the *Spectrum over Tribal Lands NPRM* seeks comment on a Tribal proposal to create a negotiation process under which Tribes could work with entities that hold Wireless Radio Service licenses to bargain in good faith for access to spectrum over unserved or underserved Tribal land. This proposal aims to combat the hurdle some Tribes have encountered where wireless licensees holding spectrum over Tribal lands have met their construction requirements, but have not built out networks to provide service to Tribal lands within their geographic area of license. If adopted this process would allow Tribes to take advantage of existing Commission rules and policies that allow license holders to provide other parties with access to spectrum through license partitioning or through spectrum leasing. For example, the *Spectrum over Tribal Lands NPRM* envisions that a Tribe might negotiate with a wireless licensee to lease or partition the portion of the license that covers Tribal lands.

70. Third, the *Spectrum over Tribal Lands NPRM* invites comment on a Tribal proposal to put into use licensed spectrum covering Tribal lands that is not being used to provide wireless services. As described in the *Spectrum over Tribal Lands NPRM,* a Tribal entity could initiate a process under which a licensee would be obligated to build out in unserved or underserved Tribal areas or divest the geographic license area covering unserved or underserved Tribal lands. The *Spectrum over Tribal Lands NPRM* seeks comment on making available such a process where an existing licensee has satisfied the applicable construction requirements for the license yet Tribal land areas remain unserved or underserved. This proposal is intended to provide Tribal governments with a process under which they could expedite service to Tribal lands.

71. A fourth proposal in the *Spectrum over Tribal Lands NPRM* would encourage licensees to deploy service on Tribal lands by enabling licensees that do so to satisfy, or get extra credit toward satisfying, the construction requirements for their licenses by focusing deployments on Tribal lands. This proposal is similar to previous efforts by the Commission to provide incentives for licensees to deploy service in rural areas. The *Spectrum over Tribal Lands NPRM* seeks comment on all aspects of this proposal.

72. Fifth, the *Spectrum over Tribal Lands NPRM* seeks input on possible revisions to the Commission's current Tribal lands bidding credit program. The Commission proposes consideration of a range of possible changes including: extending the current 3-year construction deadline within which the recipient of a Tribal lands bidding credit must deploy service on the relevant Tribal lands; and extension of the current 180-day deadline for an auction winner to obtain the necessary certification from the Tribal government for whose Tribal lands the applicant seeks to provide service.

73. Adoption of some or all of the proposals in the *Spectrum over Tribal Lands NPRM* may result in increased recordkeeping and reporting requirements for certain Wireless Radio Services licensees that are small businesses. The Commission therefore seeks comment on how to minimize any such associated burden on licensees that are small businesses.

ii. Legal Basis

74. The legal basis for the proposed rules and the *Spectrum over Tribal Lands NPRM* is contained in sections 1, 2, 4(i), 7, 10, 201, 214, 251(e), 301, 302, 303, 307(b), 308, 309(j), 310, 319, 324, 332 and 333 of the Communications Act of 1934, 47 U.S.C. 151, 152, 154(i), 157, 160, 201, 214, 251(e), 301, 302, 303, 307(b), 308, 309(j), 310, 319, 324, 332, and 333, and 47 CFR 1.411.

iii. Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply

75. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term small entity as having the same meaning as the terms small business, small organization, and small governmental jurisdiction. In addition, the term small business has the same meaning as the term small business concern under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

76. *Small Businesses.* According to estimates prepared by SBA's Office of Advocacy, in 2009, there were a total of

approximately 27.5 million small businesses nationwide.

77. *Small Organizations.* Nationwide, as of 2002, there are approximately 1.6 million small organizations. A small organization is generally any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

78. *Small Governmental Jurisdictions.* The term small governmental jurisdiction is defined generally as governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand. Census Bureau data for 2002 indicate that there were 89,476 local governmental jurisdictions in the United States. The Commission estimates that, of this total, 84,377 entities were small governmental jurisdictions. Thus, the Commission estimates that most governmental jurisdictions are small.

79. *Wireless Telecommunications Carriers (except Satellite).* Since 2007, the Census Bureau has placed wireless firms within this new, broad, economic census category. Prior to that time, such firms were within the now-superseded categories of Paging and Cellular and Other Wireless Telecommunications. Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. For the category of Wireless Telecommunications Carriers (except Satellite) preliminary data for 2007 show that there were 11,927 firms operating that year. While the Census Bureau has not released data on the establishments broken down by number of employees, the Commission note that the Census Bureau lists total employment for all firms in that sector at 281,262. Since all firms with fewer than 1,500 employees are considered small, given the total employment in the sector, the Commission estimates that the vast majority of wireless firms are small.

80. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined small business for the wireless communications services (WCS) auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a very small business as an entity with average gross revenues of $15 million for each of the three preceding years. The SBA approved these definitions. The Commission conducted an auction of geographic area licenses in the WCS service in 1997. In the auction, seven bidders that qualified as very small business entities won licenses, and one bidder that qualified as a small business entity won a license.

81. *1670–1675 MHz Services.* This service can be used for fixed and mobile uses, except aeronautical mobile. An auction for one license in the 1670–1675 MHz band was conducted in 2003. The winning bidder was not a small entity.

82. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. The SBA has developed a small business size standard for Wireless Telecommunications Carriers (except Satellite). Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees. According to Trends in Telephone Service data, 413 carriers reported that they were engaged in wireless telephony. Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees. Therefore, more than half of these entities can be considered small.

83. *Broadband Personal Communications Service.* The broadband personal communications services (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission initially defined a small business for C- and F-Block licenses as an entity that has average gross revenues of $40 million or less in the three previous calendar years. For F-Block licenses, an additional small business size standard for very small business was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These small business size standards, in the context of broadband PCS auctions, have been approved by the SBA. No small businesses within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that claimed small business status in the first two C-Block auctions. A total of 93 bidders that claimed small business status won licenses in the first auction for the D, E, and F Blocks. In 1999, the Commission completed a subsequent auction of C-, D-, E-, and F-Block licenses. Of the 57 winning bidders in that auction, 48 claimed small business status and won 277 licenses.

84. The Commission completed an auction of C and F Block Broadband PCS licenses in 2001. Of the 35 winning bidders in that auction, 29 claimed small business status. Subsequent events concerning that auction, including judicial and agency determinations, resulted in only a portion of those C and F Block licenses being available for grant. The Commission completed an auction of C-, D-, E-, and F-Block licenses in 2005. Of the 24 winning bidders in that 2005 auction, 16 claimed small business status and won 156 licenses. In 2007, the Commission completed an auction of licenses in the A, C, and F Blocks. Of the 12 winning bidders in that auction, five claimed small business status and won 18 licenses. Most recently, in 2008, the Commission completed the auction of C-, D-, E-, and F-Block Broadband PCS licenses. Of the eight winning bidders for Broadband PCS licenses in that auction, six claimed small business status and won 14 licenses.

85. *Lower 700 MHz Band Licenses.* The Commission previously adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits. The Commission defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years. A very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years. Additionally, the lower 700 MHz Service had a third category of small business status for Metropolitan/Rural Service Area (MSA/RSA) licenses, entrepreneur, which is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. The SBA approved these small size standards. An auction of 740 licenses (one license in each of the 734 MSAs/RSAs and one license in each of the six Economic Area Groupings (EAGs)) was conducted in 2002. Of the 740 licenses available for auction, 484 licenses were won by 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business or entrepreneur status and won licenses. A second auction commenced on May 28, 2003, closed on June 13, 2003, and included 256 licenses. Seventeen winning bidders claimed small or very small business status, and nine winning bidders claimed entrepreneur status. In 2005, the Commission completed an auction of 5 licenses in the Lower 700 MHz band. All three winning bidders claimed small business status.

86. In 2007, the Commission reexamined its rules governing the 700 MHz band in the *700 MHz Second Report and Order.* An auction of A, B

and E block 700 MHz licenses was held in 2008. Twenty winning bidders claimed small business status (those with attributable average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years). Thirty three winning bidders claimed very small business status (those with attributable average annual gross revenues that do not exceed $15 million for the preceding three years).

87. *Upper 700 MHz Band Licenses.* In the *700 MHz Second Report and Order,* 72 FR 48814, Aug. 24, 2007, FCC 07–132, the Commission revised its rules regarding Upper 700 MHz licenses. In 2008, the Commission commenced Auction 73 in which C and D block licenses in the Upper 700 MHz band were available. Three winning bidders claimed very small business status (those with attributable average annual gross revenues that do not exceed $15 million for the preceding three years).

88. *700 MHz Guard Band Licensees.* In 2000, in the *700 MHz Guard Band Order,* the Commission adopted size standards for small businesses and very small businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A small business in this service is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years. Additionally, a very small business is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years. SBA approval of these definitions is not required. An auction of these licenses was conducted in 2000. Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses. A second auction of 700 MHz Guard Band licenses was held in 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business.

89. *Air-Ground Radiotelephone Service.* The Commission has previously used the SBA's small business size standard applicable to Wireless Telecommunications Carriers (except Satellite), *i.e.,* an entity employing no more than 1,500 persons. There are fewer than 10 licensees in the Air-Ground Radiotelephone Service, and under that definition, the Commission estimates that almost all of them qualify as small entities under the SBA definition. For purposes of assigning Air-Ground Radiotelephone Service licenses through competitive bidding, the Commission has defined small business as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding $40 million. A very small business is defined as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding $15 million. These definitions were approved by the SBA. In its 2006 auction of nationwide commercial Air-Ground Radiotelephone Service licenses in the 800 MHz band, neither of the winning bidders claimed small business status.

90. *AWS Services (1710–1755 MHz and 2110–2155 MHz bands (AWS–1); 1915–1920 MHz, 1995–2000 MHz, 2020–2025 MHz and 2175–2180 MHz bands (AWS–2); 2155–2175 MHz band (AWS–3)).* For the AWS–1 bands, the Commission has defined a small business as an entity with average annual gross revenues for the preceding three years not exceeding $40 million, and a very small business as an entity with average annual gross revenues for the preceding three years not exceeding $15 million. In 2006, the Commission conducted its first auction of AWS–1 licenses. In that initial AWS–1 auction, 31 winning bidders identified themselves as very small businesses. Twenty-six of the winning bidders identified themselves as small businesses. In a subsequent 2008 auction, the Commission offered 35 AWS–1 licenses. Four winning bidders identified themselves as very small businesses, and three of the winning bidders identified themselves as a small business. For AWS–2 and AWS–3, although the Commission does not know for certain which entities are likely to apply for these frequencies, the Commission notes that the AWS–1 bands are comparable to those used for cellular service and personal communications service. The Commission has not yet adopted size standards for the AWS–2 or AWS–3 bands but has proposed to treat both AWS–2 and AWS–3 similarly to broadband PCS service and AWS–1 service due to the comparable capital requirements and other factors, such as issues involved in relocating incumbents and developing markets, technologies, and services.

91. *3650–3700 MHz band.* In March 2005, the Commission released a Report and Order and Memorandum Opinion and Order that provides for nationwide, non-exclusive licensing of terrestrial operations, utilizing contention-based technologies, in the 3650 MHz band (i.e., 3650–3700 MHz). As of April 2010, more than 1270 licenses have been granted and more than 7433 sites have been registered. The Commission has not developed a definition of small entities applicable to 3650–3700 MHz band nationwide, non-exclusive licensees. However, the Commission estimates that the majority of these licensees are Internet Access Service Providers (ISPs) and that most of those licensees are small businesses.

92. *Fixed Microwave Services.* Microwave services include common carrier, private-operational fixed, and broadcast auxiliary radio services. They also include the Local Multipoint Distribution Service (LMDS), the Digital Electronic Message Service (DEMS), and the 24 GHz Service. At present, there are approximately 31,428 common carrier fixed licensees and 79,732 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. There are approximately 120 LMDS licensees, three DEMS licensees, and three 24 GHz licensees. The Commission has not yet defined a small business with respect to microwave services. For purposes of the IRFA, the Commission will use the SBA's definition applicable to Wireless Telecommunications Carriers (except satellite), i.e., an entity with no more than 1,500 persons. Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. For the category of Wireless Telecommunications Carriers (except satellite) preliminary data for 2007 show that there were 11,927 firms operating that year. While the Census Bureau has not released data on the establishments broken down by number of employees, the Commission notes that the Census Bureau lists total employment for all firms in that sector at 281,262. Since all firms with fewer than 1,500 employees are considered small, given the total employment in the sector, the Commission estimates that the vast majority of firms using microwave services are small. The Commission notes that the number of firms does not necessarily track the number of licensees. The Commission estimates that virtually all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition.

93. *Broadband Radio Service and Educational Broadband Service.* Broadband Radio Service systems, previously referred to as Multipoint Distribution Service (MDS) and Multichannel Multipoint Distribution Service (MMDS) systems, and wireless cable, transmit video programming to subscribers and provide two-way high

speed data operations using the microwave frequencies of the Broadband Radio Service (BRS) and Educational Broadband Service (EBS) (previously referred to as the Instructional Television Fixed Service (ITFS)). In connection with the 1996 BRS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of no more than $40 million in the previous three calendar years. Of the 67 auction winners, 61 met the definition of a small business. BRS also includes licensees of stations authorized prior to the auction. At this time, the Commission estimates that of the 61 small business BRS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent BRS licensees that are considered small entities. After adding the number of small business auction licensees to the number of incumbent licensees not already counted, the Commission finds that there are currently approximately 440 BRS licensees that are defined as small businesses under either the SBA or the Commission's rules. In 2009, the Commission conducted an auction of 78 BRS licenses. The Commission offered three levels of bidding credits: (i) A bidder with attributed average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years (small business) will receive a 15 percent discount on its winning bid; (ii) a bidder with attributed average annual gross revenues that exceed $3 million and do not exceed $15 million for the preceding three years (very small business) will receive a 25 percent discount on its winning bid; and (iii) a bidder with attributed average annual gross revenues that do not exceed $3 million for the preceding three years (entrepreneur) will receive a 35 percent discount on its winning bid. Of the ten winning bidders, two bidders claimed small business status; one bidder claimed very small business status; and two bidders claimed entrepreneur status.

94. In addition, the SBA's Cable Television Distribution Services small business size standard is applicable to EBS. There are presently 2,032 EBS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in this analysis as small entities. Thus, the Commission estimates that at least 1,932 licensees are small businesses. Since 2007, Cable Television Distribution Services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. To gauge small business prevalence for these cable services the Commission must, however, use the most current census data that are based on the previous category of Cable and Other Program Distribution and its associated size standard; that size standard was: all such firms having $13.5 million or less in annual receipts. According to Census Bureau data for 2002, there were a total of 1,191 firms in this previous category that operated for the entire year. Of this total, 1,087 firms had annual receipts of under $10 million, and 43 firms had receipts of $10 million or more but less than $25 million. Thus, the majority of these firms can be considered small.

iv. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

95. The *Spectrum over Tribal Lands NPRM* seeks public comment on a broad range of possible solutions aimed at improving deployment of wireless communications services on Tribal lands. Some of these proposals could have potential reporting, recordkeeping, and compliance burdens for small businesses. For example, Tribal entities, some of which may be considered small entities, may be required to submit information or applications in order to initiate processes for spectrum access as proposed in the *Spectrum over Tribal Lands NPRM.* In addition, the adoption of the good faith negotiation and/or some of the construction proposals discussed in the *Spectrum over Tribal Lands NPRM* might require a small business that provides wireless communications service to areas including Tribal lands to keep records of its service deployment on Tribal lands. If a Tribal entity were to request the initiation of either the good faith negotiation or certain of the proposals for constructing on unserved or underserved Tribal lands, a small business WRS licensee might be required to submit service deployment and related information to the Commission if it wished to contest the initiation of either process. Similarly, the adoption of the good faith negotiation standards proposed in the *Spectrum over Tribal Lands NPRM* might require a small business WRS licensee to keep records of negotiations, if any, between itself and a Tribal entity.

96. Because the specific nature of these proposals has not been finalized, the Commission does not have a more specific estimate of potential reporting, recordkeeping, and compliance burdens on small businesses. The Commission anticipates that commenters will address the reporting, record-keeping, and other compliance proposals made in the *Spectrum over Tribal Lands NPRM,* and will provide reliable information on any costs and burdens on small businesses for inclusion in the record of this proceeding.

v. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

97. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

98. The proposals contained in the *Spectrum over Tribal Lands NPRM* seek to benefit Tribes and residents of Tribal lands by promoting increased use of spectrum over Tribal lands and thereby help to close communications gaps on Tribal lands. If these programs are adopted and are successful in encouraging the deployment of service to Tribal land areas, Tribes, members of Tribes and other residents of Tribal lands would benefit by having improved connectivity. These proposals, if adopted, are not intended to impose any burden on Tribal entities, though Tribes may assume additional obligations should they elect to initiate the processes described in the *Spectrum over Tribal Lands NPRM.* Therefore, this IRFA contains no analysis of the proposals' burden on Tribes.

99. The reporting and recordkeeping requirements in the *Spectrum over Tribal Lands NPRM* could have an impact on both small and large entities. While any such impact could be more financially burdensome for smaller

entities, the Commission believes the impact of such requirements would be outweighed by the benefits of promoting greater utilization of spectrum over Tribal lands. As discussed in Sections A and D of this IRFA, the adoption of the proposals in the *Spectrum over Tribal Lands NPRM* could result in increased reporting and recordkeeping burdens for small businesses that hold certain Wireless Radio Service licenses. The Commission asks for comment on alternative ways to minimize any such burdens for small businesses. The Commission expects to consider the economic impact on small businesses and other small entities, as identified in comments filed in response to the *Spectrum over Tribal Lands NPRM,* in reaching its final conclusions and taking action in this proceeding.

vi. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

100. None.

C. Initial Paperwork Reduction Analysis

101. This document contains proposed modified information collection requirements subject to Office of Management and Budget (OMB) approval; however, we are not submitting them to OMB at this time. The Commission will submit the proposed modified information collection requirements at the Final Rule Stage. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and OMB to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

IV. Ordering Clauses

104. Accordingly, *it is ordered,* pursuant to sections 1, 2, 4(i), 7, 10, 201, 214, 251(e), 301, 302, 303, 307(b), 308, 309(j), 310, 319, 324, 332 and 333 of the Communications Act of 1934, 47 U.S.C. 151, 152, 154(i), 157, 160, 201, 214, 251(e), 301, 302, 303, 307(b), 308, 309(j), 310, 319, 324, 332, 333, that this Notice of Proposed Rulemaking is hereby *adopted.*

105. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

106. *It is further ordered* that pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on this Notice of Proposed Rulemaking on or before May 19, 2011, and reply comments on or before June 20, 2011.

List of Subjects in 47 CFR Part 1

Practice and procedures, Reporting and recordkeeping requirements, Tribal lands spectrum utilization programs, Telecommunications, Competitive bidding.

Federal Communications Commission.

Bulah Wheeler,

Deputy Manager.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 1 to read as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 15 U.S.C. 79 *et seq.;* 47 U.S.C. 151, 154(j), 160, 201, 225, 303, and 309.

2. Add a new undesignated center heading and §§ 1.1001 through 1.1004 to Subpart F to read as follows:

* * * * *

Tribal Lands Spectrum Utilization Programs

Sec.

§ 1.1001 Introduction.

The purpose of these rules is to improve the availability of wireless communications services on unserved and underserved Tribal lands by promoting greater use of spectrum over Tribal lands.

§ 1.1002 Definitions.

(a) *Qualifying Tribal entity.* For the purposes of this subpart any of the following entities, as further explained below, may be designated as a qualifying Tribal entity:

(1) a Tribe;

(2) a Tribal consortium; or,

(3) an entity that is more than 50 percent owned and controlled by a Tribe or Tribes, provided that such entity is designated by the Tribal government or governments having jurisdiction over particular Tribal land and for which the spectrum access is sought.

(b) *Tribe.* Tribe(s) means any American Indian Tribe, Nation, Band, Pueblo, or Community, or Alaska Native Village, which is acknowledged by the federal government to have a government-to-government relationship with the United States and eligible for the programs and services established by the United States for Indians.

(c) *Tribal consortium.* A tribal consortium is a conglomerate organization composed of two or more Tribes, or a Tribe together with an entity that is more than 50 percent owned and controlled by a Tribe or Tribes, as defined herein.

(d) *Entities that are more than 50 percent owned and controlled by a Tribe or Tribes.* For purposes of this subpart, an entity will be considered to be more than 50 percent owned and controlled by a Tribe or Tribes where the Tribe or Tribes have both *de jure* and *de facto* control of the entity. *De jure* control of an entity is evidenced by ownership of greater than 50 percent of the voting stock of a corporation, or in the case of a partnership, general partnership interests. *De facto* control of an entity is determined on a case-by-case basis. A Tribe or Tribes must demonstrate at least the following indicia of control to establish that it retains *de facto* control of the applicant seeking eligibility as a qualifying Tribal entity:

(1) The Tribe(s) constitutes or appoints more than 50 percent of the board of directors or management committee of the entity;

(2) The Tribe(s) has authority to appoint, promote, demote, and fire senior executives that control the day to day activities of the entity;

(3) The Tribe(s) plays an integral role in the management decisions of the entity; and

(4) The Tribe(s) has the authority to make decisions or otherwise engage in practices or activities that determine or significantly influence:

(i) the nature or types of services offered by such an entity;

(ii) the terms upon which such services are offered; or

(iii) the prices charged for such services.

(e) An applicant seeking eligibility to be a qualifying Tribal entity must describe on its long-form application how it satisfies the requirements of § 1.1002(b) through (d), and must list and summarize on its long-form application all agreements that affect its

eligibility such as partnership agreements, shareholder agreements, management agreements, spectrum leasing arrangements, and all other agreements, including oral agreements, establishing *de facto* and *de jure* control of the qualifying Tribal entity. A qualifying Tribal entity also must provide the date(s) on which each of the agreements listed was entered into.

(f) An applicant seeking eligibility as a qualifying Tribal entity must attach with its long-form application a certification from the Tribal government stating that the applicant is authorized by the Tribal government to site facilities and provide service on its Tribal lands.

(g) *Tribal land(s).* Any federally recognized Indian tribe's reservation, Pueblo, or Colony, including former reservations in Oklahoma, Alaska Native regions established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), and Indian allotments.

(h) *Unserved and/or underserved Tribal land(s).* Those Tribal lands with Wireless Radio Services coverage to no more than 65 percent of the population of the Tribal land area based on the most recently available U.S. Census Data.

§ 1.1003 Tribal Licensing Priority.

During a window announced by the Commission for the filing of applications for a Tribal licensing priority, a qualifying Tribal entity having jurisdiction over unserved or underserved Tribal lands within the geographic area of a Wireless Radio Service license that has not been assigned, may submit a long-form license application for an authorization to use the Tribal land portion of that license. In the event that license applications filed by qualifying Tribal entities are mutually exclusive, the Commission will resolve these mutually exclusive applications by means of a competitive bidding process open only to those qualifying Tribal entities.

§ 1.1004 Tribal Lands Construction Safe Harbor.

Satisfaction of Construction Requirements through Service to Tribal Lands. A Wireless Radio Licensee with Tribal lands within the geographic area of its license will be deemed to have satisfied its construction obligations for its entire service area if it deploys coverage to at least 75% of the geographic area of such Tribal lands.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 64

[CG Docket No. 11–47; FCC 11–38]

Contributions to the Telecommunications Relay Service Fund

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission proposes rules to implement the "Twenty-First Century Communications and Video Accessibility Act of 2010" (CVAA) which requires each interconnected voice over Internet Protocol (VoIP) service provider and each provider of non-interconnected VoIP service to participate in and contribute to the Telecommunications Relay Services (TRS) Fund. The law directs that within one year after the date of enactment of the CVAA, such VoIP providers shall participate in and contribute to the Fund in a manner prescribed by the Commission by regulation. The regulations must oblige such participation in a manner that is consistent with and comparable to the obligations of other contributors to the fund.

DATES: Comments are due on or before May 4, 2011. Reply comments are due on or before May 19, 2011. Written comments on the proposed information collection requirements, subject to the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13, should be submitted on or before June 3, 2011.

ADDRESSES: You may submit comments, identified by [CG Docket No. 11–47], by any of the following methods:

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the Commission's Electronic Comment Filing System (ECFS) *http://fjallfoss.fcc.gov/ecfs2/* or the Federal eRulemaking Portal: *http://www.regulations.gov.* Filers should follow the instructions provided on the Web site for submitting comments and transmit one electronic copy of the filing to each docket number referenced in the caption, which in this case is CG Docket No. 11–47. For ECFS filers, in completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket number.
- Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to *ecfs@fcc.gov,* and include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in response.
- *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. In addition, parties must send one copy to the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Washington, DC 20554, or via e-mail to *fcc@bcpiweb.com.* Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW., Room TW–A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners.
- Envelopes must be disposed of *before* entering the building. The filing hours are 8 a.m. to 7 p.m.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington DC 20554.

In addition, document FCC 11–38 contains proposed information collection requirements subject to the PRA. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507 of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the proposed information collection requirements contained in this document. PRA comments should be submitted to Cathy Williams, Federal Communications Commission via e-mail at *PRA@fcc.gov* and *Cathy.Williams@fcc.gov* and Nicholas A. Fraser, Office of Management and Budget via fax at 202–395–5167 or via e-mail to *Nicholas_A._Fraser@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Rosaline Crawford, Consumer and Governmental Affairs Bureau, Disability Rights Office, at (202) 418–2075 or e-mail *Rosaline.Crawford@fcc.gov.*

For additional information concerning the PRA information collection requirements contained in this document, contact Cathy Williams, Federal Communications Commission,

at (202) 418–2918, or via e-mail *Cathy.Williams@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Contributions to the Telecommunications Relay Service Fund,* Notice of Proposed Rulemaking (*NPRM*), document FCC 11–38, adopted March 2, 2011, released March 3, 2011, in CG Docket No. 11–47.

The full text of document FCC 11–38 and copies of any subsequently filed documents in this matter will be available for public inspection and copying via ECFS, and during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. They may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone: (800) 378–3160, fax: (202) 488–5563, or Internet: *http://* www.bcpiweb.com. Document FCC 11–38 can also be downloaded in Word or Portable Document Format (PDF) at *http://www.fcc.gov/cgb/dro/trs.html#orders.* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY). To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the Web page called "Currently Under Review," (3) click on the downward-pointing arrow in the "Select Agency" box below the "Currently Under Review" heading, (4) select "Federal Communications Commission" from the list of agencies presented in the "Select Agency" box, (5) click the "Submit" button to the right of the "Select Agency" box, (6) when the list of FCC ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

Pursuant to 47 CFR 1.1200 *et. seq.,* this matter shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substances of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in 47 CFR 1.1206 (b).

Initial Paperwork Reduction Act of 1995 Analysis

The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and OMB to comment on the proposed information collection requirements contained in this document, as required by the PRA. Public and agency comments are due June 3, 2011. Comments should address: (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 estimates; (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. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506 (c)(4), the Commission seeks specific comment on how it may "further reduce the information collection burden for small business concerns with fewer than 25 employees."

OMB Control Number: 3060–0855.

Title: Telecommunications Reporting Worksheets and Related Collections.

Form No.: FCC Forms 499–A and 499–Q.

Type of Review: Revision of a currently approved collection.

Respondents: Businesses or other for-profit entities; Not-for-profit institutions.

Number of Respondents and Responses: 8,183 respondents and 46,957 responses.

Estimated Time per Response: .25 hours to 25 hours.

Frequency of Response: Annual, on-occasion and quarterly reporting requirement; Recordkeeping requirement; Third party disclosure requirement.

Obligation to Respond: Mandatory. Statutory authority for this information collection is contained in sections 151, 154(i), 154(j), 155, 157, 201, 205, 214, 225, 254, 303(r), 715 and 719 of the Act, 47 U.S.C. 151, 154(i), 154(j), 155, 157, 201, 205, 214, 225, 254, 303(r), 616, and 620.

Total Annual Burden: 313,881 hours.

Total Annual Costs: None.

Nature and Extent of Confidentiality: The Commission will allow respondents to certify that data contained in their submissions is privileged or confidential commercial or financial information and that disclosure of such information would likely cause substantial harm to the competitive position of the entity filing the FCC worksheets. If the Commission receives a request for or proposes to disclose the information, the respondent would be required to make the full showing pursuant to the Commission's rules for withholding from public inspection information submitted to the Commission.

Privacy Act Impact Assessment: No impact(s).

Needs and Uses: In document FCC 11–38, the Commission proposes rules to require contributions to the Telecommunications Relay Service Fund (TRS Fund) by non-interconnected Voice over Internet Protocol (VoIP) service providers with interstate end-user revenues. In section 103(b) of the CVAA, Congress added a new section 715 to the Communications Act of 1934, as amended (the Act), which directs the Commission, within one year after the date of enactment of the CVAA, to require each interconnected VoIP service provider and each provider of non-interconnected VoIP service to participate in and contribute to the TRS Fund established in § 64.604(c)(5)(iii) of the Commission's rules, as in effect on the date of enactment of such Act, in a manner, to be prescribed by the Commission by regulation, that is consistent with and comparable to the obligations of other contributors to the TRS Fund. In 2007, the Commission added interconnected VoIP service providers to the providers of interstate and international telecommunications services that contribute to the TRS Fund. *See VoIP TRS Order,* published at 72 FR 43546, August 6, 2007.

The *NPRM* proposes to extend these obligations to non-interconnected VoIP service providers. This would require them to register using blocks 1, 2, and 6 of the FCC Form 499–A, and to annually file the completed form with the Commission. The *NPRM* makes other proposals regarding the TRS Fund rules that do not contain any paperwork requirements.

Synopsis

1. In document FCC 11–38, the Commission proposes rules to

implement section 103(b) of the CVAA, Public Law 111–260. The CVAA added a new section 715 to the Act which requires each interconnected VoIP service provider and each provider of non-interconnected VoIP service to participate in and contribute to the TRS Fund. Section 715 of the Act also requires the Commission to adopt regulations to provide for obligations of such providers that are consistent with and comparable to the obligations of other contributors to the TRS Fund. Currently, providers of interstate and international telecommunications services and interconnected VoIP service contribute to the TRS Fund but non-interconnected VoIP providers do not. In document FCC 11–38, the Commission proposes: to conform the definition of "interconnected VoIP service with the definition in the CVAA and to define "non-interconnected VoIP service"; amend the Commission's rules to specifically require interconnected and non-interconnected VoIP service providers to contribute to the TRS Fund in a manner that is consistent with and comparable to the obligations of other contributors to the Fund; amend the Commission's rules to apply the $25 per year minimum contribution requirement only to contributors who have subject revenues; and make other editorial changes to the Commission's Rules deemed appropriate and necessary. Document FCC 11–38 also seeks comment on issues relating to the provision of free services, administrative costs of providers, possible zero and *de minimis* contributions, registration requirements, the completion and submission of Telecommunications Reporting Worksheets (FCC Form 499–A), adopting an interim safe harbor percentage for calculating interstate end-user revenues, reporting billed or collected revenues, and the implementation deadline.

Background

Interconnected VoIP Services

2. In 2007, the Commission extended section 225's TRS requirements to interconnected VoIP service providers, including that such providers must contribute to the TRS Fund. Since 2006, interconnected VoIP service providers have been required to report their annual interstate end-user telecommunications revenue information on FCC Form 499–A for the purpose of the Universal Service Fund (USF) contribution requirements.

3. Providers of "non-interconnected VoIP service" have not been required to contribute to the TRS Fund and have not been required to register or report revenues through the annual filing of FCC Form 499–A for any purpose. Examples of VoIP services that are not within the Commission's definition of "interconnected VoIP" include one-way VoIP services (*i.e.,* services that enable users to terminate calls to the Public Switched Telephone Network (PSTN), but do not permit users to receive calls that originate on the PSTN, or enable users to receive calls from the PSTN, but do not permit the user to make calls terminating to the PSTN) and IP-based voice services that do not require a broadband connection.

Discussion

4. The CVAA defines "non-interconnected VoIP" service as a service that "enables real-time voice communications that originate from or terminate to the user's location using Internet protocol or any successor protocol; and requires Internet protocol compatible customer premises equipment; and does not include any service that is an interconnected VoIP service".

5. Section 9.3 of the Commission's rules defines "interconnected VoIP service" as a service that enables real-time, two-way voice communications; requires a broadband connection from the user's location; requires Internet protocol-compatible customer premises equipment ("CPE"); and permits users generally to receive calls that originate on the PSTN and to terminate calls to the PSTN. Section 101 of the CVAA requires the Commission to define "interconnected VoIP service" as that term is defined under § 9.3 of the Commission's rules, "as such section may be amended from time to time." Document FCC 11–38 proposes to amend the TRS rules to remove the actual text of the definition, and instead codify the following language provided in the CVAA: "The term 'interconnected VoIP service' has the meaning given such term under § 9.3 of title 47, Code of Federal Regulations, as such section may be amended from time to time." It seeks comment on this proposal.

Participation in and Contribution to the TRS Fund

6. Carriers and interconnected VoIP service providers are currently required to contribute the TRS Fund and, since 2007, interconnected VoIP service providers have been reporting revenues for this purpose on FCC Form 499–A. The NPRM proposes to continue using that form for interconnected VoIP service and to extend that requirement to non-interconnected VoIP service providers. It seeks comment on this proposal.

7. The current FCC Form 499–A and instructions are not designed to collect revenue or other information from providers of "non-interconnected VoIP services." The *NPRM* proposes that the Wireline Competition Bureau, in consultation with the Commission's Consumer and Governmental Affairs Bureau, make any revisions to the FCC Form 499–A or its instructions that may be necessary to effectuate the requirements of section 715 of the Act. It seeks comment on this proposal.

8. *Revenue Base.* Currently, contributions to the TRS Fund are assessed based on "interstate end-user telecommunications revenues." The *NPRM* proposes to require non-interconnected VoIP service providers to report their interstate end-user revenues as "telecommunications revenues" on the FCC Form 499–A, for the limited purpose of determining required TRS Fund contributions, and to contribute to the TRS Fund. Requiring providers of non-interconnected VoIP services to report interstate end-user revenues as "telecommunications revenues" would be consistent with how interconnected VoIP providers have been reporting assessable revenues on the FCC Form 499–A.

9. Because some VoIP service providers offer some or all of their services free to the public, the *NPRM* asks for comment on how the Commission can ensure their participation and contributions are consistent with and comparable to the obligations of other contributors to the TRS Fund. For example, it asks whether it would be appropriate to assess contributions from providers of free VoIP services based on revenues from sources other than the "interstate end-user revenues of such services" such as revenues from advertisers, donors, or other revenue sources. The *NPRM* also seeks input on whether and how to account for end-user revenues associated with VoIP services when those services are provided as part of or in combination with other services such as Internet-based customer services or video games that generate revenue, or can the revenues associated with the VoIP service be disaggregated from the revenue, if any, associated with the non-VoIP service. The *NPRM* seeks comment on these issues.

10. *Administrative Costs to the Provider.* The Senate Report to the CVAA permits the Commission to "consider administrative costs to the provider when calculating contributions" and to "determine that an

obligation for any one provider could be zero or a *de minimis* amount." The *NPRM* seeks comment on the types of "administrative costs to the provider" that could be reported and how these may be considered when calculating contributions. It also seeks comment on how "administrative costs to the provider" might be considered when calculating contributions for a TRS Fund contributor that provides free services and therefore reports no subject revenues. Additionally, if administrative costs of interconnected or non-interconnected VoIP service providers are taken into consideration when calculating contributions, the *NPRM* seeks comment on the extent to which they should be considered any differently than the administrative costs of carriers or others required to contribute to the TRS Fund under the Commission's rules.

11. *Minimum Contribution Requirement.* Currently, carriers and interconnected VoIP service providers are required to file with USAC, by April 1st of each year, a completed FCC Form 499–A, which is used in part to calculate contributions to the TRS Fund. Filers are instructed to enter "0" on any line for which the filer had no revenues for the year. The *NPRM* seeks comment on whether a service that is offered wholly for free to the public would result in a filer reporting no end-user revenues for such service for the year.

12. The Commission has previously held that the $25 minimum TRS Fund contribution requirement applies to all telecommunications carriers that have end-user revenues. The *NPRM* tentatively concludes that VoIP service providers that have no subject revenue for the respective reporting year should not be subject to this minimum contribution amount and seeks comment on this tentative conclusion. Alternatively, the *NPRM* seeks comment on whether VoIP service providers that report no subject revenue for the reporting year should be assessed a *de minimis* contribution amount.

13. *Conforming Amendments to Rules.* The *NPRM* also proposes making conforming amendments to the Commission's rules. The *NPRM* proposes, and seeks comment on, replacing the terms "carrier," "carriers," and "service providers" in § 64.604(c)(5)(iii)(B) of the Commission's rules with the term "contributor(s)" and replacing "interstate end-user telecommunications revenues" in § 64.604(c)(5)(iii)(B) of the Commission's rules and "interstate end-user revenues of such services" in § 64.604(c)(5)(iii)(B) of the Commission's rules with the phrase "revenues subject to contributions."

14. *Meaning of* "*Participate In.*" Section 715 of the Act requires each interconnected VoIP service provider and each provider of non-interconnected VoIP service to "participate in and contribute to the [TRS] Fund." The *NPRM* tentatively concludes that the term "participate in" includes the requirement for contributors to complete and submit a Telecommunications Reporting Worksheet (FCC Form 499–A) annually and seeks comment on this conclusion and the meaning of the term "participate in" in this context.

15. *Contributor Registration.* The process of completing and submitting the FCC Form 499–A includes a registration process of the filing entity. All current TRS Fund contributors have completed this registration process. The *NPRM* tentatively concludes that requiring all providers of non-interconnected VoIP services to similarly register with the Commission and designate a District of Columbia agent for service of process using the FCC Form 499–A in accordance with its instructions will facilitate the Commission's enforcement of TRS Fund contribution obligations and is consistent with the congressional mandate for consistent and comparable obligations. The *NPRM* proposes to amend the registration requirements in § 64.1195 of the Commission's rules to include non-interconnected VoIP service providers or to adapt those rules for non-interconnected VoIP service providers under the Commission's TRS rules. Finally, the NPRM seeks comment on whether § 1.47(h) of the Commission's rules should be amended to include providers of non-interconnected VoIP services among those required to designate a District of Columbia agent for service of process.

16. *Safe Harbor.* The *NPRM* seeks comment on whether, for purposes of TRS Fund contribution calculations, a non-interconnected VoIP service provider should be permitted to report its interstate end-user revenues in FCC Form 499–A by using actual revenues, using a traffic study, or using the interim safe harbor percentage (64.9 percent).

17. *Billed or Collected Revenues.* FCC Form 499–A filers are instructed to provide information about interstate end-user telecommunications revenues that are "billed" (or "earned") or "uncollectible" rather than revenues "collected." The *NPRM* seeks comment on whether calculations of TRS Fund contributions should be based on each contributor's collected revenues rather than billed revenues.

18. *Implementation Deadline.* Section 715 of the Act requires "[w]ithin one year after the date of enactment of the CVAA" each interconnected VoIP service provider and each provider of non-interconnected VoIP service to participate in and contribute to the TRS Fund "in a manner prescribed by the Commission by regulation." The one-year deadline has already been met with regard to interconnected VoIP service providers because they have been reporting revenues and contributing to the TRS Fund annually since 2007. The *NPRM* proposes to require non-interconnected VoIP service providers to register and designate a District of Columbia agent for service of process by September 30, 2011, using the FCC Form 499–A in accordance with its instructions. It also proposes to require all non-interconnected VoIP service providers to complete and submit FCC Form 499–A by April 1, 2012 to report interstate end-user revenues for such services for the period from October 1 through December 31, 2011. Finally, it proposes to begin assessing non-interconnected VoIP service providers for TRS contributions based on revenues reported for the October through December 2011 period for the 2012 through 2013 TRS Fund year (July 1, 2012 through June 30, 2013). The *NPRM* seeks comments on these proposals.

Initial Regulatory Flexibility Analysis

19. The Regulatory Flexibility Act of 1980, as amended (RFA), requires that an initial regulatory flexibility analysis be prepared for notice-and-comment rulemaking proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." The Commission has certified that the rules proposed in document FCC 11–38, if promulgated, will not have a significant economic impact on a substantial number of small entities.

20. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A "small business concern" is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

21. In document FCC 11–38, the Commission seeks comment on its

proposal to implement section 103(b) of the CVAA, signed into law by President Obama on October 8, 2010, that requires the Commission to establish rules requiring each interconnected VoIP service provider and each provider of non-interconnected VoIP service to participate in and contribute to the interstate TRS Fund beginning within one year of the enactment of the CVAA.

22. The TRS Fund compensates providers of TRS for their reasonable costs of providing the service on an interstate basis. Document FCC 11–38 seeks comment on, and proposes rules, to implement section 103(b) of the CVAA and to require providers of non-interconnected VoIP service to participate in and contribute to the TRS Fund in a manner that is consistent with and comparable to other contributors. Document FCC 11–38 also seeks comment on issues relating to the possible zero and *de minimis* contributions in connection with the provision of free services and the administrative costs of providers, registration requirements, the completion and submission of Telecommunications Reporting Worksheets (FCC Form 499–A), the adoption of an interim safe harbor percentage for calculating interstate end-user revenues, and the implementation deadline.

23. Specifically, document FCC 11–38 proposes: to require providers of non-interconnected VoIP service to register with the Commission and designate a District of Columbia agent for service of process for purposes of contributing to the TRS Fund; to complete and file FCC Form 499–A annually; to permit providers of non-interconnected VoIP service to determine interstate end-user revenues by using actual revenues, a traffic study or to utilize a safe harbor; and to exempt service providers with no end user revenues for the reporting year from the $25 minimum contribution requirement to the TRS Fund. It also seeks comment on whether sources of revenue other than interstate end-user revenues (*e.g.,* advertising, donations) should be considered when a service provider has no end-user revenues (*i.e.,* when services are provided to the public for free) and whether TRS Fund contributions should be based on each contributor's collected revenues rather than billed revenues.

24. The Commission proposes to require that non-interconnected VoIP service providers register and designate a District of Columbia agent for service of process by filling out blocks 1, 2, and 6 of the FCC Form 499–A and to annually file the completed Form with the Commission. This is consistent with the Congressional mandate in section 103(b) of the CVAA to require providers of non-interconnected VoIP service to participate in and contribute to the TRS Fund in a manner that is consistent with and comparable to the obligations of other contributors to the Fund. Such reporting would be for the limited purpose of determining required TRS Fund contributions and would not prejudge issues concerning the appropriate regulatory classification of VoIP services. It has previously been estimated that filling out the FCC Form 499–A takes 13.5 hours (*i.e.,* less than two work days of a single full-time employee) annually. Thus, filling out the form does not have a significant economic impact upon small entities.

25. Document FCC 11–38 seeks comment on how the Commission can best ensure that the obligations of VoIP service providers that offer some or all of their interstate services free to the public are consistent with and comparable to the obligations of other contributors to the TRS Fund. Section 225(d)(3)(B) of the Act requires the Commission to adopt regulations that costs caused by interstate telecommunications relay service be recovered from "all subscribers" for every interstate service. Document FCC 11–38 seeks comment on whether it would be necessary or appropriate to assess contributions from providers of free VoIP services based on revenues from sources other than the "interstate end-user revenues of such services," such as advertising and donor contributions, or whether TRS Fund contributions of VoIP providers should be based solely on interstate end-user revenues, even if that results in a zero contribution. Because the typical contribution historically has been slightly less than 1% of revenues annually, this will not have a significant economic impact upon small entities.

26. Additionally, the TRS rules currently impose a minimum $25 contribution on all entities, regardless of their reported revenues. Document FCC 11–38 proposes that if the Commission determines that contributions to the TRS Fund are to be based solely on interstate end-user revenues, VoIP providers and other carriers subject to TRS Fund contribution requirements with a zero contribution calculation (*i.e.,* they either did not charge for end-user service or generated some end-user revenue but it was offset by administrative costs that cancelled out the revenue) not be subject to the minimum $25 contribution. If this proposal is not adopted, alternatively, document FCC 11–38 seeks comment on whether a VoIP service provider that reports no revenue for the reporting year should be assessed a "*de minimis*" contribution amount. Even if the Commission applies the minimum $25 annual contribution to the TRS Fund to providers with a zero contribution calculation, it would not constitute a significant economic impact upon small entities.

27. The Commission has previously recognized that some interconnected VoIP service providers may have difficulty complying with the end-user revenue reporting requirements because they do not have the ability to identify whether calls are interstate. As a result, the Commission established a safe harbor which estimated the percentage of interconnected VoIP service revenues attributable to interstate calls to be 64.9%. These VoIP service providers may report their interstate end-user revenues on the FCC Form 499–A by using actual revenues, a traffic study or the safe harbor. Document FCC 11–38 seeks comment on whether the Commission should also apply the safe harbor to non-interconnected VoIP service providers. Because the safe harbor is used when it reduces TRS Fund contributions, application of it to non-interconnected VoIP services will not have any significant negative economic impact upon small entities.

28. Document FCC 11–38 also requests input on whether to modify the FCC Form 499–A to ask filers to provide information on "collected" (*i.e.* earned) revenues rather than, as currently, on "billed" (*i.e.,* potentially uncollectible) revenues. This would harmonize the basis for TRS Fund contributions with those for the Universal Service Fund, which bases contributions on "collected" revenues. Because it would relieve providers of basing their contribution to the TRS Fund on billed revenues, it would reduce TRS Fund contributions and therefore would not have any significant negative economic impact upon small entities.

29. Finally, the CVAA requires that VoIP service providers begin participating in, and contributing to, the TRS Fund within one year of the date of the CVAA's enactment. This deadline has been met with regard to interconnected VoIP service providers who have been participating in the Fund since 2007. To meet the statutory deadline, document FCC 11–38 proposes to require non-interconnected VoIP service providers to register by September 30, 2011 by completing blocks 1, 2 and 6 of the FCC Form 499–A, and to complete and submit the Form by April 1, 2012, reporting their end-user revenues for the period from October 1 through December 31, 2011.

This uniform registration deadline is mandated by statute and will not have a significant adverse economic impact upon small entities.

30. With regard to whether a *substantial number* of small entities may be economically impacted by the requirements proposed in document FCC 11–38, the Commission notes that a substantial number of small entities will be likely be affected; however, for the reasons stated above, the cumulative economic impact on such entities will be *de minimis*. Most participating entities are likely to meet the definition of a small entity as a "small organization." VoIP service providers are included in the census business category "All Other Telecommunications." This category comprises "establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or VoIP services via client-supplied telecommunications connections are also included in this industry." For this category, Census Bureau data for 2007 show that there were a total of 2,383 firms that operated for the entire year. Of this total, 2,347 firms had annual receipts of under $25 million and 12 firms had annual receipts of $25 million to $49,999,999. Consequently, the Commission estimates that the majority of All Other Telecommunications firms are small entities that might be affected by our action.

31. Historically, the contributions to the TRS Fund have totaled slightly less than 1% of revenues. Moreover, many non-interconnected VoIP service providers offer their services for free and, unless revenue sources other than end-user interstate revenues are included, will have no annual contribution or the *de minimis* $25 contribution, depending on the outcome of this proceeding. Accordingly, the Commission concludes that a zero or $25 contribution is a *de minimis* amount.

32. Therefore, based on the foregoing analysis of all foreseeable economic impacts, the Commission certifies that the proposals in document FCC 11–38, if adopted, will not have a significant economic impact on a substantial number of small entities.

33. The Commission will send a copy of the document FCC 11–38, including a copy of this Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the SBA.

Ordering Clauses

Pursuant to the authority contained in sections 1, 4(i), 4(j), 225, and 715 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 225, and 616, document FCC 11–38 IS ADOPTED. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of document FCC 11–38, including the Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 1

Communications common carriers, Reporting and recordkeeping requirements, Telecommunications.

47 CFR Part 64

Reporting and recordkeeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

Bulah Wheeler,

Deputy Manager.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR parts 1 and 64 as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 15 U.S.C. 79 *et seq.;* 47 U.S.C. 151, 154(i), 154(j), 155, 157, 225, 303(r), and 309.

2. In § 1.47, revise paragraph (h) to read as follows:

§ 1.47 Service of documents and proof of service.

* * * * *

(h) Every common carrier and interconnected VoIP provider, as defined in § 54.5 of this chapter, and non-interconnected VoIP provider, as defined in § 64.601(a)(15) of this chapter, that is subject to the Communications Act of 1934, as amended, shall designate an agent in the District of Columbia, and may designate additional agents if it so chooses, upon whom service of all notices, process, orders, decisions, and requirements of the Commission may be made for and on behalf of such carrier, interconnected VoIP provider, or non-interconnected VoIP provider in any proceeding before the Commission. Such designation shall include, for the carrier, interconnected VoIP provider, or non-interconnected VoIP provider and its designated agents, a name, business address, telephone or voicemail number, facsimile number, and, if available, Internet e-mail address. Such carrier, interconnected VoIP provider, or non-interconnected VoIP provider shall additionally list any other names by which it is known or under which it does business, and, if the carrier, interconnected VoIP provider, or non-interconnected VoIP provider is an affiliated company, the parent, holding, or management company. Within thirty (30) days of the commencement of provision of service, such carrier, interconnected VoIP provider, or non-interconnected VoIP provider shall file such information with the Chief of the Enforcement Bureau's Market Disputes Resolution Division. Such carriers, interconnected VoIP providers, and non-interconnected VoIP providers may file a hard copy of the relevant portion of the Telecommunications Reporting Worksheet, as delineated by the Commission in the **Federal Register**, to satisfy this requirement. Each Telecommunications Reporting Worksheet filed annually by a common carrier, interconnected VoIP provider, or non-interconnected VoIP provider must contain a name, business address, telephone or voicemail number, facsimile number, and, if available, Internet e-mail address for its designated agents, regardless of whether such information has been revised since the previous filing. Carriers, interconnected VoIP providers, and non-interconnected VoIP providers must notify the Commission within one week of any changes in their designation information by filing revised portions of the Telecommunications Reporting Worksheet with the Chief of the Enforcement Bureau's Market Disputes Resolution Division. A paper copy of this designation list shall be maintained in the Office of the Secretary of the Commission. Service of any notice, process, orders, decisions or requirements of the Commission may be made upon such carrier, interconnected VoIP provider, or non-interconnected VoIP provider by leaving a copy thereof with such designated agent at his office or usual place of residence. If such carrier, interconnected VoIP provider, or non-interconnected VoIP provider fails to designate such an agent, service of any notice or other process in any proceeding before the Commission, or of

any order, decision, or requirement of the Commission, may be made by posting such notice, process, order, requirement, or decision in the Office of the Secretary of the Commission.

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

3. The authority citation for part 64 is revised to read as follows:

Authority: 47 U.S.C. 154, 254(k); secs. 404(b)(2(B), (c), Pub. L. 104–104, 110 Stat. 56. Interpret or apply 47 U.S.C, 201, 218, 222, 225, 226, 228, 254(k), 616, and 620, unless otherwise noted.

Subpart F—Telecommunications Relay Services and Related Customer Premises Equipment for Persons With Disabilities

4. The authority citation for subpart F is revised to read as follows:

Authority: 47 U.S.C. 151–154; 225, 255, 303(r), 616, and 620.

5. In § 64.601, revise paragraph (a)(10), redesignate paragraphs (a)(15) through (a)(27) as paragraphs (a)(16) through (a)(28), and by adding new paragraph (a)(15) to read as follows:

§ 64.601 Definitions and provisions of general applicability.

(a) * * *

(10) Interconnected VoIP service. The term "interconnected VoIP service" has the meaning given such term under § 9.3 of title 47, Code of Federal Regulations, as such section may be amended from time to time.

* * * * *

(15) Non-interconnected VoIP service. The term "non-interconnected VoIP service"—

(i) means a service that—

(A) enables real-time voice communications that originate from or terminate to the user's location using Internet protocol or any successor protocol; and

(B) requires Internet protocol compatible customer premises equipment; and

(ii) does not include any service that is an interconnected VoIP service.

* * * * *

6. In § 64.604, revise paragraphs (c)(5)(iii)(A) and (c)(5)(iii)(B), remove paragraph (c)(5)(iii)(D), redesignate paragraph (c)(5)(iii)(C) as paragraph (c)(5)(iii)(D), and add new paragraph (c)(5)(iii)(C) to read as follows:

§ 64.604 Mandatory minimum standards.

* * * * *

(c) * * *

(5) * * *

(iii) * * *

(A) *Contributions.* Every carrier providing interstate telecommunications services (including interconnected VoIP service providers pursuant to § 64.601(b)) and every provider of non-interconnected VoIP service shall contribute to the TRS Fund on the basis of interstate end-user telecommunications revenues as described herein. Contributions shall be made by all carriers who provide interstate services, including, but not limited to, cellular telephone and paging, mobile radio, operator services, personal communications service (PCS), access (including subscriber line charges), alternative access and special access, packet-switched, WATS, 800, 900, message telephone service (MTS), private line, telex, telegraph, video, satellite, intraLATA, international and resale services. For purposes of this paragraph, telecommunications revenues include revenues from non-interconnected VoIP services.

(B) *Contribution computations.* Contributors' contributions to the TRS fund shall be the product of their subject revenues for the prior calendar year and a contribution factor determined annually by the Commission. The contribution factor shall be based on the ratio between expected TRS Fund expenses to the contributors' revenues subject to contribution. In the event that contributions exceed TRS payments and administrative costs, the contribution factor for the following year will be adjusted by an appropriate amount, taking into consideration projected cost and usage changes. In the event that contributions are inadequate, the fund administrator may request authority from the Commission to borrow funds commercially, with such debt secured by future years' contributions. Each subject contributor that has revenues subject to contribution must contribute at least $25 per year. Contributors whose annual contributions total less than $1,200 must pay the entire contribution at the beginning of the contribution period. Contributors whose contributions total $1,200 or more may divide their contributions into equal monthly payments. Contributors shall complete and submit, and contributions shall be based on, a "Telecommunications Reporting Worksheet" (as published by the Commission in the **Federal Register**). The worksheet shall be certified to by an officer of the contributor, and subject to verification by the Commission or the administrator at the discretion of the Commission. Contributors' statements in the worksheet shall be subject to the provisions of section 220 of the Communications Act of 1934, as amended. The fund administrator may bill contributors a separate assessment for reasonable administrative expenses and interest resulting from improper filing or overdue contributions. The Chief of the Consumer and Governmental Affairs Bureau may waive, reduce, modify or eliminate contributor reporting requirements that prove unnecessary and require additional reporting requirements that the Bureau deems necessary to the sound and efficient administration of the TRS Fund.

(C) Registration Requirements for Providers of Non-Interconnected VoIP Service.

(*1*). Applicability. A non-interconnected VoIP service provider that will provide interstate service shall file the registration information described in paragraph (c)(5)(iii)(C)(*2*) of this section in accordance with the procedures described in paragraphs (c)(5)(iii)(C)(*3*) and (c)(5)(iii)(C)(*4*) of this section. Any non-interconnected VoIP service provider already providing interstate service on the effective date of these rules shall submit the relevant portion of its FCC Form 499–A in accordance with paragraphs (c)(5)(iii)(C)(*2*) and (c)(5)(iii)(C)(*3*) of this section.

(*2*). Information required for purposes of TRS Fund contributions. A non-interconnected VoIP service provider that is subject to the registration requirement pursuant to paragraph (c)(5)(iii)(C)(*1*) of this section shall provide the following information:

(*i*) The provider's business name(s) and primary address;

(*ii*) The names and business addresses of the provider's chief executive officer, chairman, and president, or, in the event that a provider does not have such executives, three similarly senior-level officials of the provider;

(*iii*) The provider's regulatory contact and/or designated agent;

(*iv*) All names that the provider has used in the past; and

(*v*) The state(s) in which the provider provides such service.

(*3*). Submission of registration. A provider that is subject to the registration requirement pursuant to paragraph (c)(5)(iii)(C)(*1*) of this section shall submit the information described in paragraph (c)(5)(iii)(C)(*2*) of this section in accordance with the Instructions to FCC Form 499–A. FCC Form 499–A must be submitted under oath and penalty of perjury.

(*4*). Changes in information. A provider must notify the Commission of any changes to the information provided

pursuant to paragraph (c)(5)(iii)(C)(*2*) of this section within no more than one week of the change. Providers may satisfy this requirement by filing the relevant portion of FCC Form 499–A in accordance with the Instructions to such form.

* * * * *

[FR Doc. 2011–7798 Filed 4–1–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 11–54, RM–11624; DA 11–499]

Television Broadcasting Services; Augusta, GA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission has before it a petition for rulemaking filed by Southern Media Holdings, Inc. ("SMH"), the licensee of station WFXG, Augusta, Georgia, requesting the substitution of channel 51 for channel 31 at Augusta. SMH seeks this channel substitution as it cannot obtain the credit necessary to construct the channel 31 facility and states that the money required to construct the channel 31 facility will instead be used to serve other aspects of the public interest.

DATES: Comments must be filed on or before May 4, 2011, and reply comments on or before May 19, 2011.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 445 12th Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for petitioner as follows: Harry C. Martin, Esq., Fletcher, Heald & Hildreth, PLC, 1300 N. 17th Street, 11th Floor, Arlington, VA 22209.

FOR FURTHER INFORMATION CONTACT: Joyce L. Bernstein, *joyce.bernstein@fcc.gov,* Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 11–54, adopted March 15, 2011, and released March 16, 2011. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC 20554. This document will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–478–3160 or via e-mail *http://www.BCPIWEB.com.* To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts (other than *ex parte* presentations exempt under 47 CFR 1.1204(a)) are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1208 for rules governing restricted proceedings.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

Proposed Rule

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336, and 339.

§ 73.622(i) [Amended]

2. Section 73.622(i), the Post-Transition Table of DTV Allotments under Georgia, is amended by adding channel 51 and removing channel 31 at Augusta.

[FR Doc. 2011–7787 Filed 4–1–11; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 31, 32, 45, 49, 52, and 53

[FAR Case 2010–009; Docket 2010–0009; Sequence 1]

RIN 9000–AL95

Federal Acquisition Regulation; Government Property

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to clarify reporting, reutilization, and disposal of Government property and the contractor requirements under the Government property clause.

DATES: Interested parties should submit written comments to the Regulatory Secretariat at one of the addressees shown below on or before June 3, 2011. to be considered in the formation of the final rule.

ADDRESSES: Submit comments in response to FAR Case 2010–009 by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inputting "FAR Case 2010–009" under the heading "Enter Keyword or ID" and selecting "Search." Select the link "Submit a Comment" that corresponds with "FAR Case 2010–009." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "FAR Case 2010–009" on your attached document.
- *Fax:* (202) 501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), ATTN: Hada Flowers, 1275 First Street, NE., 7th Floor, Washington, DC 20417.

Instructions: Please submit comments only and cite FAR Case 2010–009, in all correspondence related to this case. All

comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Jeritta Parnell, Procurement Analyst, at (202) 501–4082, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAR Case 2010–009.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA are proposing to amend the FAR to clarify current FAR policy with respect to the proper disposition of contractor inventory. However, a number of other changes were made, aimed at enhancing the management of Government contract property in the hands of contractors. The changes are the result of questions raised by contractors and Government personnel, Government and industry exchanges, and lessons learned. In addition, some comments from the previous FAR Case 2008–011, published in the **Federal Register** at 75 FR 38675 on July 2, 2010), that were deemed to be outside the scope of that case, are addressed in this case.

The revisions include the following:

1. Clarify that FAR part 45 and FAR 52.245–1 does not apply to Government property incidental to the place of performance at a Government site or installation. See FAR 45.000.

2. Add new definitions for "loss of Government property" and "unit acquisition cost" in FAR part 45 and FAR 52.245–1, delete the definition of "acquisition cost," and move the definition of "surplus property" from part 45 to part 2.

3. Update FAR subpart 45.6 to clarify and align with the Federal Management Regulation; and

4. Revise language based on comments received in response to, but outside the scope of, FAR Case 2008–011.

II. Executive Order 12866

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

III. Regulatory Flexibility Act

The proposed changes may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act 5 U.S.C. 601, *et seq.,* because the rule affects the method of managing some Government property in the hands of contractors, particularly scrap. However, as the rule reduces the burden on all businesses by removing the reporting of production scrap, it should have a positive effect on small businesses. An Initial Regulatory Flexibility Act (IRFA) analysis has been prepared and is summarized as follows.

This Initial Regulatory Flexibility Analysis has been prepared consistent with Section 603, Title 5, of the United States Code.

1. Description of the reasons why action by the agency is being considered.

DoD, GSA, and NASA are proposing to revise FAR parts 45 and 52. The focus of this effort is to clarify FAR subpart 45.6, Reporting, Reutilization, and Disposal, and the contractor requirements under the clause at FAR 52.245–1.

The revisions include technical corrections to align the FAR with the requirements of the Federal Management Regulation (FMR). For example, the new language is now consistent with current property reutilization priorities, abandonment and destruction determinations, and surplus sales policy. Moreover, the language has been edited for clarity and placed in proper process sequence. Also included is new and expanded policy language on the disposal of scrap.

Notwithstanding the proposed rule's overall focus on FAR subpart 45.6 and the associated contractor requirements under FAR 52.245–1, additional revisions include new language at FAR 45.104 for contracting officers on depositing monies received from contractors for property that is lost, damaged, destroyed or stolen.

In essence, the rule does not result in new requirements on contractors; it clarifies existing policies and procedures. The rule will simplify compliance for contractors and enable consistent Government oversight.

2. Succinct statement of the objectives of, and legal basis, for, the proposed rule.

Title 40 U.S.C. 524, Public Buildings, Property, and Works requires, in part, that executive agencies account for Government property, determine when such property is excess, and dispose of excess Government property promptly. This proposed rule amends the FAR to revise the policies for the disposition of contractor inventory. The objective of this case is to substantially revise, clarify, and improve current policy.

3. Description of, and, where feasible, estimate of the number of small entities to which the proposed rule will apply.

It is estimated that approximately 5000 contractors have Federal property in their possession. DoD has approximately 3000 contractors with potential contract-property reporting requirements. Approximately 60 percent of all DoD contractors are small businesses. Given that property in the possession of contractors is overwhelmingly DoD property, it is estimated the DoD ratio of small business to total businesses having such property is a reasonable approx-imation for all Government contractors. Therefore, it is estimated that approximately 3000 small businesses have Government property in their possession.

4. Description of projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report of record.

FAR Case 2004–025 streamlined the requirements concerning property management in FAR part 45. FAR Case 2008–011 continued that philosophy. This new proposed rule seeks continuous improvement to property management by streamlining and clarifying the policies for the disposition of contractor inventory. DoD, GSA, and NASA believe the rule will have a positive effect on small businesses in that it further streamlines the process and reduces the paperwork burden.

It should be noted that these recommended changes are consistent with the Office of the Under Secretary of Defense, Acquisition, Technology and Logistics, recent statements emphasizing the need to improve the productivity of the defense industry and remove Government impediments to efficiency.

There are four reports currently required. These reports are required to assure appropriate use and disposition of contract property. These reports are—

SF 1423, Inventory Verification Survey.
SF 1424, Inventory Disposal Report.
SF 1428, Inventory Disposal Schedule.
SF 1429, Inventory Disposal Schedule Continuation Sheet.

All of these forms are available online and may be submitted by the contractor using electronic means. It should be noted that DoD no longer requires the use of the SF 1428 and 1429 forms and instead DoD uses the web-enabled Plant Clearance Automated Reutilization and Reporting System (PCARRS). NASA and other Federal agency contractors use PCARRS when their contracts are delegated to DCMA for plant clearance. Use of PCARRS reduces burden on small businesses as well other businesses by providing an easily accessible web-based reporting mechanism.

5. Identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap, or conflict with the proposed rule.

The Federal Property Management Regulation (FPMR) and the FMR published by the General Services Administration provide property management guidance to Government personnel. Some of the requirements of the FMR are implemented by the FAR in regard to contracts awarded to Federal contractors. The FPMR and FMR do not duplicate, overlap, or conflict with the proposed rule.

6. Description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statues and which minimize any significant economic impact of the proposed rule on small entities.

There are no known alternatives to this proposed rule. However, the proposed rule should not have a significant adverse economic impact on a substantial number of

small entities. In fact, the current impact to both large and small contractors will be reduced. For example, the current FAR requires Government approval of contractor scrap procedures prior to allowing the contractor to dispose of ordinary production scrap. In addition, the current practice of requiring contractors (without approved scrap procedures) to submit inventory schedules or scrap lists for production scrap assumes that such practice is economically or otherwise justified in all cases. This practice unnecessarily burdens small contractors that generate only small amounts of scrap.

This proposed rule removes the requirement for Government approvals of contractor scrap procedures and submitting inventory schedules and scrap lists, thus easing the burden on large and small contractors alike. It should be noted that contractor procedures would still be required and evaluated by the agency responsible for contract administration, as a normal part of contract property administration. The new rule will also result in more consistent levels of Government oversight, further easing the burden on small entities.

The information required by the proposed rule has been reduced to the minimum necessary to assure compliance with the Government's statutory accountability requirements.

The Regulatory Secretariat will be submitting a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat. DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAR Case 2010–009) in correspondence.

IV. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) applies because the proposed rule contains information collection requirements. Accordingly, the Regulatory Secretariat will submit a request for approval of a revised information collection requirement concerning Government Property to the Office of Management and Budget.

Annual Reporting Burden:

Public reporting burden for this collection of information is estimated to average .32 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows:

Respondents: 4,875.

Responses per respondent: 910.26.

Total annual responses: 4,437,518.

Preparation hours per response: .32.

Total response burden hours: 1,420,006.

V. Request for Comments Regarding Paperwork Burden

Submit comments, including suggestions for reducing this burden, not later than June 3, 2011 to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, Regulatory Secretariat (MVCB), ATTN: Hada Flowers, 1275 First Street, NE., 7th Floor, Washington, DC 20417.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Requesters may obtain a copy of the supporting statement from the General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street, NE., 7th Floor, Washington, DC 20417. Please cite OMB Control Number 9000–00XX, Government Property, in correspondence.

List of Subjects in 48 CFR Parts 2, 31, 32, 45, 49, 52, and 53

Government procurement.

Dated: March 24, 2011.

Millisa Gary,

Acting Director, Office of Governmentwide Acquisition Policy.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 2, 31, 32, 45, 49, 52, and 53 as set forth below:

1. The authority citation for 48 CFR parts 2, 31, 32, 45, 49, 52, and 53 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 2—DEFINITIONS OF WORDS AND TERMS

2. Amend section 2.101 in paragraph (b) by adding, in alphabetical order, the definition "Surplus property" to read as follows:

2.101 Definitions.

* * * * *

(b) * * *

Surplus property means excess personal property not required by any Federal agency as determined by the Administrator of the General Services Administration (GSA). See 41 CFR 102–36.40.

* * * * *

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

3. Amend section 31.205–19 by revising paragraphs (e)(2)(iv) introductory text, (e)(2)(iv)(A), and (e)(2)(iv)(C) to read as follows:

31.205–19 Insurance and indemnification.

* * * * *

(e) * * *

(2) * * *

(iv) Costs of insurance for the risk of loss of Government property are allowable to the extent that—

(A) The contractor is liable for such loss;

* * * * *

(C) Such insurance does not cover loss of Government property that results from willful misconduct or lack of good faith on the part of any of the contractor's managerial personnel (as described in FAR 52.245–1(h)(1)(ii)).

* * * * *

PART 32—CONTRACT FINANCING

4. Amend section 32.503–16 by revising the first sentence of paragraph (a) to read as follows:

32.503–16 Risk of loss.

(a) Under the Progress Payments clause, and except for normal spoilage, the contractor bears the risk of loss of Government property for property affected by the clause, even though title is vested in the Government, unless the Government has expressly assumed this risk. * * *

* * * * *

5. Amend section 32.1010 by revising the first sentence of paragraph (a) to read as follows:

32.1010 Risk of loss.

(a) Under the clause at 52.232–32, Performance-Based Payments, and except for normal spoilage, the contractor bears the risk of loss of Government property, even though title is vested in the Government, unless the Government has expressly assumed this risk. * * *

* * * * *

PART 45—GOVERNMENT PROPERTY

6. Revise section 45.000 to read as follows:

45.000 Scope of part.

(a) This part prescribes policies and procedures for providing Government property to contractors; contractors' management and use of Government property; and reporting, redistributing, and disposing of contractor inventory.

(b) It does not apply to—

(1) Government property provided under any statutory leasing authority, except as to non-Government use of property under 45.301(f);

(2) Property to which the Government has acquired a lien or title solely because of partial, advance, progress, or performance based payments;

(3) Disposal of real property;

(4) Software and intellectual property; or

(5) Government property that is incidental to the place of performance, when the contract requires contractor personnel to be located on a Government site or installation, and when the property used by the contractor within the location remains accountable to the Government. Items considered to be incidental to the place of performance include, for example, office space, desks, chairs, telephones, computers, and fax machines.

7. Amend section 45.101 by—

a. Removing the definition "Acquisition cost";

b. Adding in alphabetical order the definitions "Loss of Government property", and "Production scrap";

c. Removing the definition "Surplus property" and

d. Adding in alphabetical order the definition "Unit acquisition cost".

The added text reads as follows:

45.101 Definitions.

* * * * *

Loss of Government property means unintended, unforeseen or accidental loss, damage, or destruction of Government property that reduces the Government's expected economic benefits of the property. Loss of Government property does not include purposeful destructive testing, obsolescence, normal wear and tear, or manufacturing defects. Loss of Government property includes, but is not limited to—

(1) Items that cannot be found after a reasonable search;

(2) Theft;

(3) Damage resulting in unexpected harm to property requiring repair to restore the item to usable condition; or

(4) Destruction resulting from incidents that render the item useless for its intended purpose or beyond economical repair.

* * * * *

Production scrap means material left over from the normal production process that has only remelting or reprocessing value, *e.g.,* textile and metal clippings, borings, and faulty castings and forgings.

* * * * *

Unit acquisition cost means—

(1) For Government-furnished property, the dollar value assigned by the Government and identified in the contract; and

(2) For contractor-acquired property, the cost derived from the contractor's records that reflect consistently applied generally accepted accounting principles.

8. Amend section 45.102 by adding paragraph (e) to read as follows:

45.102 Policy.

* * * * *

(e) Government property, other than foundations and similar improvements necessary for installing special tooling, special test equipment, or equipment, shall not be installed or constructed on contractor-owned real property in such fashion as to become nonseverable, unless the head of the contracting activity determines that such installation or construction is necessary and in the Government's interest.

9. Amend section 45.104 by—

a. Revising the introductory text of paragraph (a);

b. Revising paragraph (b); and

c. Adding paragraphs (d) and (e).

The revised and added text reads as follows:

45.104 Responsibility and liability for Government property.

(a) Generally, contractors are not held liable for loss of Government property under the following types of contracts:

* * * * *

(b) The contracting officer may revoke the Government's assumption of risk when the property administrator determines that the contractor's property management practices are noncompliant with contract requirements.

* * * * *

(d) With respect to loss of Government property, the contracting officer, in consultation with the property administrator, shall determine—

(1) The extent, if any, of contractor liability based upon the amount of damages corresponding to the associated lost property; and

(2) The appropriate form and method of Government recovery (may include repair, replacement, or other restitution).

(e) Any monies received as financial restitution shall be credited to the Treasury of the United States as miscellaneous receipts, unless otherwise authorized by statute (31 U.S.C. 3302(b)).

10. Amend section 45.105, by revising the first sentence of the introductory text of paragraph (b), and by revising paragraphs (b)(1) and (d) to read as follows:

45.105 Contractors' property management system compliance.

* * * * *

(b) The property administrator shall notify the contractor in writing when the contractor's property management system does not comply with contractual requirements, shall request prompt correction of deficiencies, and shall request from the contractor a corrective action plan, including a schedule for correction of the deficiencies. * * *

(1) Revocation of the Government's assumption of risk for loss of Government property; and/or

* * * * *

(d) When the property administrator determines that a reported case of loss of Government property is a risk assumed by the Government, the property administrator shall notify the contractor in writing that they are granted relief of stewardship responsibility and liability in accordance with FAR clause 52.245–1(f)(1)(vii). Where the property administrator determines that the risk of loss of Government property is not assumed by the Government, the property administrator shall request that the contracting officer hold the contractor responsible and liable.

11. Amend section 45.107 by—

a. Revising paragraph (a)(1)(i);

b. Removing from paragraph (b) "service contracts" and adding "fixed-price service contracts" in its place; and

c. Removing from paragraph (d) "acquisition cost" and adding "unit acquisition cost" in its place.

The revised text reads as follows:

45.107 Contract clauses.

(a)(1) * * *

(i) All cost-reimbursement, time-and-material, and labor-hour type solicitations and contracts; and, when property is expected to be furnished for the labor-hour contracts.

* * * * *

12. Amend section 45.201 by—

a. Removing from paragraph (a)(1) "tracking and/or" and adding "tracking and management, and/or" in its place;

b. Removing from paragraph (a)(4) "tracking); and" and adding "tracking and management); and" in its place; and

c. Revising paragraph (c)(4).

The revised text reads as follows:

45.201 Solicitation.

* * * * *

(c) * * *

(4) A description of the offeror's property management system and any customary commercial practices, voluntary consensus standards, or industry leading practices and standards to be used by the offeror in managing Government property.

* * * * *

45.202 [Amended]

13. Amend section 45.202 by removing from the first sentence of paragraph (a) "from the contractor" and adding "from an offeror or contractor" in its place.

14. Amend section 45.602–1 by—

a. Removing from paragraphs (b)(2) and (b)(3) "Require a contractor" and adding "Require the contractor" in its place;

b. Removing from paragraph (b)(4) "might entitle" and adding "may entitle" in its place;

c. Revising the introductory text of paragraph (c) and the introductory text of paragraph (c)(1);

d. Removing from paragraph (c)(1)(i) "acquisition cost" and adding "unit acquisition cost" in its place; and

e. Revising paragraph (c)(1)(iv).

The revised text reads as follows:

45.602–1 Inventory disposal schedules.

* * * * *

(c) The contractor may request the plant clearance officer's approval to remove the Government property from an inventory schedule.

(1) Plant clearance officers may approve removal of Government property from an inventory schedule when—

* * * * *

(iv) The contractor has requested continued use of the Government property, and the contracting officer has authorized its retention and further use.

* * * * *

15. Amend section 45.602–2 by—

a. Revising the introductory text and paragraph (a);

b. Removing paragraph (b);

c. Redesignating paragraphs (c) and (d) as paragraphs (b) and (c), respectively;

d. Removing from newly redesignated paragraph (b) "April 17, 1996)," and adding "April 17, 1996, and 15 U.S.C. 3710(i);" in its place;

e. Revising newly redesignated paragraph (c);

f. Adding new paragraphs (d) and (e).

The revised and added text reads as follows:

45.602–2 Reutilization priorities.

Plant clearance officers shall initiate reutilization actions for all property not meeting the abandonment or destruction criteria of 45.603(b). Authorized methods, listed in descending order from highest to lowest priority, are—

(a) Reuse within the owning agency;

* * * * *

(c) Report to GSA for reuse within the Federal Government or donation as surplus property;

(d) Dispose of the following property in accordance with agency procedures without reporting to GSA:

(1) Property determined appropriate for abandonment or destruction (see FMR 102–36.305, 41 CFR 102–36.305).

(2) Property furnished to nonappropriated fund activities property (see FMR 102–36.165, 41 CFR 102–36.165).

(3) Foreign excess personal property (see FMR 102–36.380, 41 CFR 102–36.380).

(4) Scrap, except aircraft in scrap condition.

(5) Perishables, defined for the purposes of this section as any personal property subject to spoilage or decay.

(6) Trading stamps and bonus goods.

(7) Hazardous waste or toxic and hazardous materials.

(8) Controlled substances.

(9) Property dangerous to public health and safety.

(10) Classified items or property determined to be sensitive for reasons of national security; and

(e) Dispose of nuclear materials (see 45.603–3(b)(5)) in accordance with the Nuclear Regulatory Commission (NRC), applicable state licenses, applicable Federal regulations, and agency regulations.

16. Revise section 45.603 to read as follows:

45.603 Abandonment or destruction of personal property.

(a) When contractor inventory is processed through the reutilization screening process prescribed in 45.602–2 without success, and provided the property has no commercial value, does not require demilitarization, and does not constitute a danger to public health or welfare, plant clearance officers or other authorized officials may without further approval—

(1) Direct the contractor to destroy the property;

(2) Abandon non-sensitive property at the contractor's or sub-contractor's premises; or

(3) Abandon sensitive property at the contractor's or sub-contractor's premises, with contractor consent.

(b) Provided a Government reviewing official at least one level higher than the plant clearance officer or other agency authorized official approves, plant clearance officers or other agency authorized officials may authorize the abandonment, or order the destruction of other contractor inventory at the contractor's or sub-contractor's premises, in accordance with FMR 102–36–305 through 325 and consistent with the following:

(1) The property is not considered sensitive, does not require demilitarization, has no commercial value or reutilization, transfer or donation potential, and does not constitute a danger to public health or welfare.

(2) The estimated cost of continued care and handling of the property (including advertising, storage and other costs associated with making the sale), exceed the estimated proceeds from its sale.

(c) In lieu of abandonment or its authorized destruction, the plant clearance officer or authorized official may authorize the donation of property including unsold surplus property to public bodies, provided that the property is not sensitive property, does not require demilitarization, and it does not constitute a danger to public health or welfare. The Government will not bear any of the costs incident to such donations.

(d) Unless the property qualifies for one of the exceptions under FMR 102–36.330 (41 CFR 102–36.330), the plant clearance officer or requesting official will ensure prior public notice of such actions of abandonment or destruction consistent with FMR 102–36.325 (41 CFR 102–36.325).

17. Revise the section heading of 45.604 to read as follows:

45.604 Sale of surplus personal property.

* * * * *

18. Revise section 45.604–1 to read as follows:

45.604–1 Sales procedures.

Surplus personal property that has completed screening in accordance with 45.602–3(a) shall be sold in accordance with the policy for the sale of surplus personal property contained in the Federal Management Regulation, at Part 102–38 (41 CFR part 102–38). Agencies may specify implementing procedures.

45.604–2 [Removed]

19. Remove section 45.604–2.

45.604–3 and 45.604–4 [Redesignated as 45.604–2 and 45.604–3]

20A. Redesignate sections 45.604–3 and 45.604–4 as sections 45.604–2 and 45.604–3, respectively.

20B. Revise the newly redesignated section 45.604–2 to read as follows:

45.604–2 Use of GSA sponsored sales centers.

Agencies may use sales center services. Use of such centers for sale of surplus property is authorized when in the best interest of the Government, consistent with contract terms and conditions.

21. Add section 45.604–4 to read as follows:

45.604–4 Sale of property pursuant to the exchange/sale authority.

Agencies should consider the sale of property pursuant to the exchange/sale authority in FMR 102–39 (41 CFR part 102–39) when agencies are acquiring or plan to acquire similar products and other requirements of the authority are satisfied.

22. Revise section 45.605 to read as follows:

45.605 Inventory disposal reports.

The plant clearance officer shall promptly prepare an SF 1424, Inventory Disposal Report, following disposition of the property identified on an inventory disposal schedule and the crediting of any related proceeds. The report shall identify any lost or otherwise unaccounted for property and any changes in quantity or value of the property made by the contractor after submission of the initial inventory disposal schedule. The report shall be provided to the administrative contracting officer or, for termination inventory, to the termination contracting officer, with a copy to the property administrator.

23. Revise section 45.606–1 to read as follows:

45.606–1 Contractor scrap procedures.

(a) The property administrator should ensure that contractor scrap disposal processes, methods and practices allow for effective, efficient and proper disposition, and are properly documented in the contractor's property management procedures.

(b) The property administrator should determine the extent to which separate disposal processing or physical segregation for different scrap types is or may be required as early as possible, preferably during the solicitation phase. Such scrap may require physical segregation, unique disposal processing or separate plant clearance reporting. For example, the scope of work may create scrap—

(1) Consisting of sensitive items;

(2) Containing hazardous materials or wastes;

(3) Contaminated with hazardous materials or wastes;

(4) That is classified or otherwise controlled;

(5) Containing precious or strategic metals; or

(6) That is dangerous to public health or safety.

(c) Absent contract terms and conditions to the contrary, the Government may abandon parts removed and replaced from property as a result of normal maintenance actions, or removed from property as a result of the repair, maintenance, overhaul, or modification process.

45.606–2 and 45.606–3 [Removed]

24. Remove sections 45.606–2 and 45.606–3.

PART 49—TERMINATION OF CONTRACTS

49.204 [Amended]

25. Amend section 49.204 by removing from paragraph (b) "destroyed, lost, stolen, or" and adding "lost or" in its place.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

26. Amend section 52.232–16 by revising the date of the clause, and the last sentence of paragraph (e) to read as follows:

52.232–16 Progress Payments.

* * * * *

Progress Payments (Date)

* * * * *

(e) * * * The Contractor shall repay the Government an amount equal to the unliquidated progress payments that are based on costs allocable to property that is lost (see 45.101).

* * * * *

27. Amend section 52.232–32 by revising the date of the clause, and the last sentence of paragraph (g) to read as follows:

52.232–32 Performance-Based Payments.

* * * * *

Performance-Based Payments (Date)

* * * * *

(g) * * * If any property is lost (see 45.101), the basis of payment (the events or performance criteria) to which the property is related shall be deemed to be not in compliance with the terms of the contract and not payable (if the property is part of or needed for performance), and the Contractor shall refund the related performance-based payments in accordance with paragraph (d) of this clause.

* * * * *

28. Amend section 52.245–1 by—

a. Revising the date of the clause;

b. Removing the definition "Acquisition cost" from paragraph (a);

c. Adding, in alphabetical order, the definitions, "Loss of Government property", and "Production scrap" to paragraph (a);

d. Removing the definition "Surplus property" from paragraph (a);

e. Adding, in alphabetical order, the definition "Unit acquisition cost" to paragraph (a);

f. Revising paragraph (b)(1);

g. Removing from paragraph (b)(2) ", stolen, damaged, or destroyed";

h. Adding paragraph (b)(4);

i. Removing from paragraph (f)(1)(ii) "property (document the receipt)" and adding "property and document the receipt" in its place;

j. Revising paragraphs (f)(1)(iii)(A)(*1*), (f)(1)(iii)(A)(*10*), (f)(1)(v)(A), (f)(1)(vi), and (f)(1)(vii);

k. Removing from paragraph (f)(1)(x) "loss, theft, damage, or destruction" and adding "loss of Government property" in its place;

l. Removing from paragraph (f)(2) "acquisitions" and adding "acquisitions, loss of Government property," in its place;

m. Removing paragraph (f)(3);

n. Removing from paragraph (h)(1) introductory text "loss, theft, damage or destruction to the" and adding "loss of" in its place;

o. Revising paragraph (h)(1)(ii), (h)(1)(iii), (h)(2), and (h)(3);

p. Redesignating paragraph (h)(4) as paragraph (h)(5);

q. Adding new paragraph (h)(4);

r. Adding the words "or authorizing official" before the period at the end of the introductory text of paragraph (j);

s. Removing paragraph (j)(1);

t. Redesignating paragraphs (j)(2) through (j)(10) as paragraphs (j)(1) through (j)(9), respectively;

u. Revising newly redesignated paragraphs (j)(1)(i), (j)(1)(ii), the introductory text of paragraph (j)(2)(i), (j)(2)(i)(A), (j)(2)(ii), and (j)(2)(iii), (j)(2)(iv)(C), and (j)(3);

v. Removing from the first sentence of the newly redesignated paragraph (j)(6)(ii) the word "Government";

w. Removing the newly redesignated paragraph (j)(7)(i);

x. Further redesignating newly redesignated paragraphs (j)(7)(ii) and (j)(7)(iii) as (j)(7)(i) and (j)(7)(ii), respectively;

y. Removing from the newly redesignated paragraph (j)(9) "paragraph

(j)(4)" and adding "paragraph (j)(3)" in its place;

z. Removing from paragraphs (k)(1) and (k)(2) "Government property", respectively, and adding "property" in its place;

aa. Redesignating paragraph (k)(3) as paragraph (k)(4); and adding a new paragraph (k)(3);

bb. Removing from Alternate I "(Aug 2010)" and adding "(Date)" in its place; and removing from paragraph (h)(1) of Alternate I "loss, theft, damage, or destruction," and adding "loss" in its place; and

cc. Removing from Alternate II "(June 2007)" and adding "(Date)" in its place; and removing from the first and second sentences of paragraph (e)(3) of Alternate II "having an" and adding "having a unit" in its place (two times).

The added and revised text reads as follows:

52.245–1 Government Property.

* * * * *

Government Property (Date)

(a) * * *

Loss of Government property means unintended, unforeseen or accidental loss, damage or destruction to Government property that reduces the Government's expected economic benefits of the property. Loss of Government property does not include purposeful destructive testing, obsolescence, normal wear and tear or manufacturing defects. Loss of Government property includes, but is not limited to—

(1) Items that cannot be found after a reasonable search;

(2) Theft;

(3) Damage resulting in unexpected harm to property requiring repair to restore the item to usable condition; or

(4) Destruction resulting from incidents that render the item useless for its intended purpose or beyond economical repair.

* * * * *

Production scrap means material left over from the normal production process that has only remelting or reprocessing value, *e.g.,* textile and metal clippings, borings, and faulty castings and forgings.

* * * * *

Unit acquisition cost means—(1) For Government-furnished property, the dollar value assigned by the Government and identified in the contract; and

(2) For contractor-acquired property, the cost derived from the contractor's records that reflect consistently applied generally accepted accounting principles.

* * * * *

(b) * * *

(1) The Contractor shall have a system to manage (control, use, preserve, protect, repair and maintain) Government property in its possession. The system shall be adequate to satisfy the requirements of this clause. In doing so, the Contractor shall initiate and maintain the processes, systems, procedures, records, and methodologies necessary for effective control of Government property. Prior to implementation, the Contractor shall disclose to the Property Administrator any significant changes to their property management system. The Contractor may employ customary commercial practices, voluntary consensus standards and/or industry-leading practices and standards that provide effective Government property management that are necessary and appropriate for the performance of this contract (except where inconsistent with law or regulation).

* * * * *

(4) The Contractor shall establish and maintain procedures necessary to assess its property management system effectiveness, and shall perform periodic internal reviews and audits. Significant findings and/or results of such reviews and audits pertaining to Government property shall be made available to the Property Administrator.

* * * * *

(f) * * *

(1) * * *

(iii) * * *

(A) * * *

(*1*) The name, part number and description, National Stock Number (if needed for additional item identification tracking and/or disposition), and other data elements as required in accordance with the terms and conditions of the contract.

* * * * *

(*10*) Date placed in service (if required in accordance with the terms and conditions of the contract).

* * * * *

(v) * * *

(A) The Contractor shall award subcontracts that clearly identify items to be provided or for fabricated items, the extent of any restrictions or limitations. The Contractor shall ensure appropriate flow down of contract terms and conditions (*e.g.,* extent of liability for loss of Government property.

* * * * *

(vi) *Reports.* The Contractor shall have a process to create and provide reports of discrepancies, loss of Government property, physical inventory results, audits and self-assessments, corrective actions, and other property related reports as directed by the Contracting Officer.

(vii) *Relief of stewardship responsibility and liability.* The contractor shall have a process to enable the prompt recognition, investigation, disclosure and reporting of loss of Government property, including losses that occur at subcontractor or alternate site locations.

(A) This process shall include the corrective actions necessary to prevent recurrence.

(B) Unless otherwise directed by the Property Administrator, the Contractor shall report, upon recognition of loss of Government property, all such incidents of property loss, investigate and promptly furnish to the property administrator a written narrative of all incidents of such property loss as soon as the facts become known or when requested by the Government. Such reports shall, at a minimum, contain the following information:

(*1*) Date of incident (if known).

(*2*) The data elements required under paragraph (f)(1)(iii)(A) of this clause.

(*3*) Quantity.

(*4*) Accountable contract number.

(*5*) A statement indicating current or future need.

(*6*) Unit acquisition cost, or if applicable, estimated sales proceeds, estimated repair or replacement costs.

(*7*) All known interests in commingled material of which includes Government material.

(*8*) Cause and corrective action taken or to be taken to prevent recurrence.

(*9*) A statement that the Government will receive any reimbursement covering the loss of Government property, in the event the Contractor was or will be reimbursed or compensated.

(*10*) Copies of all supporting documentation.

(*11*) Last known location.

(*12*) A statement that the property did or did not contain sensitive, hazardous or toxic material, and if so, that the appropriate agencies were notified.

(C) Unless the contract provides otherwise, the Contractor shall be relieved of stewardship responsibility and liability for property when–

(*1*) Such property is consumed or expended, reasonably and properly, or otherwise accounted for, in the performance of the contract, including reasonable inventory adjustments of material as determined by the Property Administrator;

(*2*) Property Administrator grants relief of responsibility and liability for loss of Government property;

(*3*) Property is delivered or shipped from the Contractor's plant, under Government instructions, except when shipment is to a subcontractor or other location of the Contractor; or

(*4*) Property is disposed of in accordance with paragraphs (j) and (k) of this clause.

* * * * *

(h) * * *

(1) * * *

(ii) Loss of Government property that is the result of willful misconduct or lack of good faith on the part of the Contractor's managerial personnel.

(iii) The Contracting Officer has, in writing, revoked the Government's assumption of risk for loss of Government property due to a determination under paragraph (g) of this clause that the Contractor's property management practices are inadequate, and/or present an undue risk to the Government, and the Contractor failed to take timely corrective action. If the Contractor can establish by clear and convincing evidence that the loss of Government property occurred while the Contractor had adequate property management practices or the loss did not result from the Contractor's failure to maintain adequate property management practices, the Contractor shall not be held liable.

(2) The Contractor shall take all reasonable actions necessary to protect the property from further loss. The Contractor shall

separate the damaged and undamaged property, place all the affected property in the best possible order, and take such other action as the Property Administrator directs.

(3) The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any loss of Government property.

(4) The Contractor shall reimburse the Government for loss of Government property, to the extent that the Contractor is financially liable for such loss, as directed by the Contracting Officer.

* * * * *

(j) * * *

(1) * * *

(i) If the Contractor determines that the property has the potential to fulfill requirements under other contracts, the Contractor, in consultation with the Property Administrator, shall request that the Contracting Officer transfer the property to the contract in question, or provide authorization for use, as appropriate. In lieu of transferring the property, the Contracting Officer may authorize the Contractor to credit the costs of Contractor-acquired property (material only) to the losing contract, and debit the gaining contract with the corresponding cost, when such material is needed for use on another contract. Property no longer needed shall be considered contractor inventory.

(ii) For any remaining Contractor-acquired property, the Contractor may purchase the property at the unit acquisition cost if desired or make reasonable efforts to return unused property to the appropriate supplier at fair market value (less, if applicable, a reasonable restocking fee that is consistent with the supplier's customary practices.)

(2) *Inventory disposal schedules.* (i) Provided the property was not reutilized, transferred, or otherwise disposed of under paragraph (j)(1) of this clause the Contractor, as directed by the Plant Clearance Officer shall use Standard Form 1428, Inventory Disposal Schedule or electronic equivalent, to identify and report—

(A) Government-furnished property that is no longer required for performance of this contract;

* * * * *

(ii) The Contractor may annotate inventory disposal schedules to identify property the Contractor wishes to purchase from the Government, in the event that the property is offered for sale.

(iii) Separate inventory disposal schedules are required for aircraft in any condition, flight safety critical aircraft parts, and other items as directed by the Plant Clearance Officer.

(iv) * * *

(C) For precious metals in raw or bulk form, the type of metal and estimated weight.

* * * * *

(3) *Submission requirements.* (i) The Contractor shall submit inventory disposal schedules to the Plant Clearance Officer no later than—

(A) 30 days following the Contractor's determination that a property item is no longer required for performance of this contract;

(B) 60 days, or such longer period as may be approved by the Plant Clearance Officer, following completion of contract deliveries or performance; or

(C) 120 days, or such longer period as may be approved by the Termination Contracting Officer, following contract termination in whole or in part.

(ii) Unless the Plant Clearance Officer determines otherwise, the Contractor need not identify or report production scrap on inventory disposal schedules, and may process and dispose of production scrap in accordance with its own internal scrap procedures. The processing and disposal of other types of Government-owned scrap will be conducted in accordance with the terms and conditions of the contract or Plant Clearance Officer direction, as appropriate.

* * * * *

(k) * * *

(3) Absent contract terms and conditions to the contrary, the Government may abandon parts removed and replaced from property as a result of normal maintenance actions, or removed from property as a result of the repair, maintenance, overhaul, or modification process.

* * * * *

29. Amend section 52.245–2 by revising the date of the clause, and paragraph (b) to read as follows:

52.245–2 Government Property Installation Operation Services.

* * * * *

Government Property Installation Operation Services (Date)

* * * * *

(b) The Government bears no responsibility for repair or replacement of any lost Government property. If any or all of the Government property is lost, or becomes no longer usable, the Contractor shall be responsible for replacement of the property at Contractor expense. The Contractor shall have title to all replacement property and shall continue to be responsible for contract performance.

* * * * *

30. Amend section 52.249–2 by revising the date of the clause, and paragraph (h) to read as follows:

52.249–2 Termination for Convenience of the Government (Fixed-Price).

* * * * *

Termination for Convenience of the Government (Fixed-Price) (Date)

* * * * *

(h) Except for normal spoilage, and except to the extent that the Government expressly assumed the risk of loss, the Contracting Officer shall exclude from the amounts payable to the Contractor under paragraph (g) of this clause, the fair value, as determined by the Contracting Officer, for the loss of the Government property.

* * * * *

31. Amend section 52.249–3 by revising the date of the clause, and paragraph (h) to read as follows:

52.249–3 Termination for Convenience of the Government (Dismantling, Demolition, or Removal of Improvements).

* * * * *

Termination for Convenience of the Government (Dismantling, Demolition, or Removal of Improvements) (Date)

* * * * *

(h) Except for normal spoilage, and except to the extent that the Government expressly assumed the risk of loss, the Contracting Officer shall exclude from the amounts payable to the Contractor under paragraph (g) of this clause, the fair value, as determined by the Contracting Officer, for the loss of the Government property.

* * * * *

32. Revise section 52.251–1 to read as follows:

52.251–1 Government Supply Sources.

As prescribed in 51.107, insert the following clause:

Government Supply Sources (Date)

The Contracting Officer may issue the Contractor an authorization to use Government supply sources in the performance of this contract. Title to all property acquired by the Contractor under such an authorization shall vest in the Government. The provisions of the clause entitled "Government Property," at 52.245–1, shall apply to all property acquired under such authorization.

(End of clause)

PART 53—FORMS

33. Amend section 53.245 by revising paragraph (c) to read as follows:

53.245 Government property.

* * * * *

(c) SF 1423 (*Rev. 5/2004), Inventory Verification Survey.* (See 45.602–1(b)(1).)

* * * * *

[FR Doc. 2011–7436 Filed 4–1–11; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

RIN 0648–BA65

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Quotas and Atlantic Tuna Fisheries Management Measures

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

ACTION: Notification of public hearing.

SUMMARY: On March 14, 2011, NMFS published a proposed rule to modify Atlantic bluefin tuna (BFT) base quotas for all domestic fishing categories; establish BFT quota specifications for the 2011 fishing year; reinstate pelagic longline target catch requirements for retaining BFT in the Northeast Distant Gear Restricted Area (NED); amend the Atlantic tunas possession at sea and landing regulations to allow removal of Atlantic tunas tail lobes; and clarify the transfer at sea regulations for Atlantic tunas. This action was necessary to implement recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT), as required by the Atlantic Tunas Convention Act (ATCA), and to achieve domestic management objectives under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). On March 21, 2011, NMFS published a correction notice that extended the comment period for this action until April 28, 2011, allowing a 45-day comment period, rescheduled the Gloucester, MA, public hearing that was originally scheduled for March 21, 2011, to April 1, 2011, and announced that additional public hearings would be scheduled in a future notice. In this document NMFS is announcing additional public hearings in Fairhaven, MA, and Portland, ME, in order to provide greater opportunity for public comment on the proposed rule.

DATES: A hearing will be held on April 25, 2011, from 6 to 9 p.m. in Portland, ME, and a hearing will be held on April 26, 2011, from 6 to 9 p.m. in Fairhaven, MA. Public comments on the proposed rule must be received on or before April 28, 2011. See **SUPPLEMENTARY INFORMATION** for further details.

ADDRESSES: As published on March 14, 2011 (76 FR 13583), you may submit comments, identified by "0648–BA65", by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal at *http://www.regulations.gov.*
- *Fax:* 978–281–9340, Attn: Sarah McLaughlin.
- *Mail:* Sarah McLaughlin, Highly Migratory Species Management Division, Office of Sustainable Fisheries (F/SF1), NMFS, 55 Great Republic Drive, Gloucester, MA 01930
- *Instructions:* All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only. To be considered, electronic comments must be submitted via the Federal eRulemaking Portal *http://www.regulations.gov.* Do not submit electronic comments to individual NMFS staff.

Supporting documents, including the draft Environmental Assessment, Regulatory Impact Review, and Initial Regulatory Flexibility Analysis, are available by sending your request to Sarah McLaughlin at the mailing address specified above. These documents and others, such as the Fishery Management Plans described below, also may be downloaded from the HMS Web site at *http://www.nmfs.noaa.gov/sfa/hms/.*

The additional public hearing locations are:

1. Portland, ME—Holiday Inn by the Bay, 88 Spring St., Portland, ME 04101.
2. Fairhaven, MA—Seaport Inn and Marina, 110 Middle Street, Fairhaven, MA 02719.

FOR FURTHER INFORMATION CONTACT: Sarah McLaughlin or Brad McHale, 978–281–9260.

SUPPLEMENTARY INFORMATION: Atlantic bluefin tuna, bigeye tuna, albacore tuna, yellowfin tuna, and skipjack tuna (hereafter referred to as "Atlantic tunas") are managed under the dual authority of the Magnuson-Stevens Act and ATCA. ATCA authorizes the Secretary of Commerce (Secretary) to promulgate regulations, as may be necessary and appropriate, to implement ICCAT recommendations. The authority to issue regulations under the Magnuson-Stevens Act and ATCA has been delegated from the Secretary to the Assistant Administrator for Fisheries, NOAA (AA).

In the proposed rule, NMFS announced four public hearings. NMFS has received several comments requesting additional public hearings. NMFS has determined that it is reasonable to conduct additional public hearings to provide greater opportunities for public comment and is conducting additional hearings in Fairhaven, MA, and Portland, ME. These hearings will allow NMFS to collect additional public comments on the proposed rule, which will assist NMFS in determining final management measures to conserve and manage the Atlantic tunas fisheries, consistent with the 2006 Consolidated HMS FMP, the Magnuson-Stevens Act, ATCA, and other applicable law.

Dated: March 29, 2011.

Emily H. Menashes,

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

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 110218142–1146–02]

RIN 0648–BA91

Fisheries of the Northeastern United States; Northeast Skate Complex Fishery; Framework Adjustment 1

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement measures in Framework Adjustment 1 to the Northeast Skate Complex Fishery Management Plan (Skate FMP). Framework Adjustment 1 was developed by the New England Fishery Management Council (Council) to adjust the possession limits for the skate wing fishery in order to slow the rate of skate wing landings, so that the available Total Allowable Landings limit (TAL) is taken by the fishery over a longer duration in the fishing year (FY) than occurred in FY 2010, thus ensuring a steady market supply. The action would also allow vessels that process skate wings at sea to land skate carcasses for sale into the bait market, without counting the carcass landings against the TAL (skate wings are already converted to live weight for monitoring). Although recommended by the Council as part of Framework 1, this proposed rule announces NMFS's intention to disapprove a proposal to increase the incidental possession limit for skate wings that would apply after the skate wing possession limit trigger is reached. This proposed rule does not adjust the skate fishery specifications for FY 2011.

DATES: Public comments must be received no later than 5 p.m., Eastern Standard Time, on April 19, 2011.

ADDRESSES: An environmental assessment (EA) was prepared for

Framework Adjustment 1 that describes the proposed action and other considered alternatives and provides a thorough analysis of the impacts of the proposed measures and alternatives. Copies of Framework 1, the EA, and the Initial Regulatory Flexibility Analysis (IRFA), are available on request from Paul J. Howard, Executive Director, New England Fishery Management Council (Council), 50 Water Street, Newburyport, MA 01950. These documents are also available online at *http://www.nefmc.org.*

You may submit comments, identified by 0648–BA91, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal: *http://www.regulations.gov.*
- *Fax:* (978) 281–9135, Attn: Michael Pentony.
- *Mail:* Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope, "Comments on Skate Framework 1 Proposed Rule."

Instructions: All comments received are part of the public record and will generally be posted to *http://www.regulations.gov* without change. All personal identifying information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Michael Pentony, Senior Fishery Policy Analyst, (978) 281–9283; fax: (978) 281–9135.

SUPPLEMENTARY INFORMATION:

Background

In 2003, NMFS implemented the Skate FMP to manage a complex of seven skate species in the Northeast Region: Winter (*Leucoraja ocellata*); little (*L. erinacea*); thorny (*Amblyraja radiata*); barndoor (*Dipturus laevis*); smooth (*Malacoraja senta*); clearnose (*Raja eglanteria*); and rosette (*L. garmani*) (see 68 FR 49693, August 19, 2003). The FMP established biological reference points and overfishing definitions for each species based on abundance indices in the NMFS Northeast Fisheries Science Center bottom trawl survey.

Amendment 3 to the Skate FMP, which was implemented in July 2010, instituted an annual catch limit (ACL) and accountability measures (AMs) for the skate fishery (see 75 FR 34049, June 16, 2010). To ensure that the ACL is not exceeded, regulations implementing Amendment 3 established a possession limit of 5,000 lb (2,268 kg) of skate wings (11,350 lb (5,148 kg) whole weight) per trip for the skate wing fishery, and an AM that further reduces the wing fishery possession limit to an incidental level of 500 lb (227 kg) of skate wings (1,135 lb (515 kg) whole weight) when 80 percent of the TAL for the wing fishery is reached. In FY 2010, the combination of increased landings of skate wings and a delay in implementation of the 5,000-lb (2,268-kg) skate wing possession limit resulted in the fishery reaching the 80-percent TAL trigger in early September. Consequently, the wing fishery has been limited to the incidental possession limit of 500 lb (227 kg) of skate wings per trip from September 3, 2010, through the end of FY 2010 on April 30, 2011.

Asserting that the imposition of the 500-lb (227-kg) skate wing possession limit so early in the FY caused disruptions in the supply of skate wings, economic hardship on fishing vessels and dealers, and threatened to undermine the market position of U.S. suppliers, members of the skate wing fishing industry requested that the Council consider options to mitigate the potential for this situation to be repeated in FY 2011. In November 2010, the Council initiated Framework 1 to change the skate wing possession limits in order to maximize the duration of the skate fishing season in FY 2011. In January 2011, the Council approved Framework 1 and recommended that NMFS implement new possession limits for the skate wing fishery, as described below.

Proposed Measures

Framework 1 proposes the following changes to the regulations governing the skate fishery:

1. That the skate wing fishery possession limit be changed from 5,000 lb (2,268 kg) of skate wings per trip to 2,600 lb (1,179 kg) per trip from May 1 through August 31, and 4,100 lb (1,860 kg) per trip from September 1 through April 30;

2. That the skate wing fishery incidental possession limit (the limit that applies to all landings of skate wings once landings reach the appropriate TAL trigger percentage) be changed from 500 lb (227 kg) of skate wings per trip to 1,250 lb (567 kg) per trip;

3. That the skate wing fishery incidental possession limit trigger be changed from 80 percent of the skate wing TAL to 85 percent of the skate wing TAL; and

4. That the regulations governing the allowable forms of skates that may be possessed and landed be changed to allow the landing of skate carcasses separate from skate wings (currently, only whole skates or skate wings—without the associated carcasses—may be possessed and landed).

By reducing the skate wing possession limit from 5,000 lb (2,268 kg) of skate wings per trip to the lower amounts identified above, the Council intends to slow the landings of skate wings in order to promote an extended directed fishery. The Council's recommendation to impose different possession limits at different times of the year reflects advice from members of the skate fishing industry regarding the times of year when demand for skate wings is generally higher and the price is also likely to be higher. Based on data from 2009 and 2010, the average price per lb of skate wings was $0.33 for May–August and $0.64 for September–April. Thus, the proposed 2,600-lb (1,179-kg) limit would serve to constrain landings when demand and price are both lower, preserving more of the available TAL to be harvested under the higher 4,100-lb (1,860-kg) limit when demand and price are more favorable.

The Council's recommendation to change the trigger point at which the incidental possession limit is imposed is also an attempt to lengthen the duration of the directed skate wing fishery. However, based on the analysis prepared by the Council's Skate Plan Development Team and presented to the Council at its January 2011 meeting, the combination of a 1,250-lb (567-kg) incidental possession limit and an 85-percent trigger point would be expected to result in landings exceeding the skate wing TAL by more than 7 percent. Amendment 3 to the Skate FMP established the TAL as the limit for skate landings, taking into account the needs of the skate wing and bait fisheries (*i.e.,* allocating the overall skate TAL to the skate wing and bait fisheries according to specific percentages), discards of skates in all fisheries that encounter skates, and the biological status of the resource. The management measures implemented in Amendment 3 were designed to constrain overall skate landings to the TAL, and, in situations in which a TAL is exceeded, the Amendment 3 regulations require automatic

adjustments to the TAL trigger threshold (on a point-for-point basis). If the wing TAL were to be exceeded by 7 percent, as the Council's analysis indicates is likely, then the Amendment 3 regulations would require the TAL trigger for the following FY to be reduced from 85 percent of the TAL to 78 percent of the TAL, forcing an even earlier transition to the incidental possession limit. It would be inconsistent with the intent of Framework 1 (implement measures to extend the length of the directed skate wing fishery) and the objectives of Amendment 3 (implement measures to constrain landings to within the available TAL) to alter both the incidental skate wing possession limit and the TAL trigger point, as proposed by the Council. The Council's analysis suggests that the trigger point could be increased to 85 percent of the TAL if the incidental wing limit is maintained at the current 500-lb (227-kg) level, while still remaining within the TAL. Therefore, this proposed rule announces NMFS's intention to disapprove the proposed change to the incidental skate wing possession limit at § 648.322(b)(2). Disapproving the change in the incidental limit would not affect the other measures proposed in this action. NMFS seeks comments on the Council's proposed action, as well as keeping the incidental possession limit at 500 lb (227 kg) in the event this proposed measure is disapproved.

The Council's recommendation to allow possession and landing of skate carcasses is intended to promote a fuller utilization of the skate resource, by enabling fishermen to retain the carcasses that would otherwise be discarded at sea once the skate wings are cut and removed. Currently, vessels must either retain the whole skates and cut the wings after landing, or discard the skate carcasses at sea once the wings are removed. This proposed change would allow fishermen to retain the skate carcasses and sell them as bait, increasing the economic yield of the skate resource without any change in fishing mortality. Under the proposed revision to the regulations, skates could be possessed or landed either as wings only, wings with associated carcasses possessed separately, or in whole form, or any combination of the three, provided that the weight of skate carcasses does not exceed 1.27 times the weight of skate wings on board. This ratio, based upon established wing-to-whole weight conversion factor for skates, would help assure that the only carcasses possessed and landed correspond to skates which have had their wings removed and retained by the vessel for sale. When any combination of wings, carcasses, and whole skates are possessed, the possession limit would be based on the equivalent whole weight limit where wing weight is converted to whole weight using the wing to whole weight conversion factor of 2.27. For example, 100 lb (45.4 kg) of skate wings $\times$ 2.27 = 227 lb (103.1 kg) of whole skates. If wings and carcasses were possessed separately in this case, the vessel could possess 100 lb (45.4 kg) of skate wings and 100 $\times$ 1.27 = 127 lb (57.6 kg) of carcasses. The sum of the two products must not exceed the whole weight possession limit. This action is not intended to allow the landing of skate carcasses without skate wings.

NMFS seeks comments on all of the proposed measures in Framework 1, as well as on keeping the incidental skate wing possession limit at 500 lb (227 kg) if this measure is disapproved.

As required under section 303(c) of the Magnuson-Stevens Act, the Council reviewed the draft regulations and deemed them necessary and appropriate for implementation of Framework 1. Technical changes to the regulations deemed necessary by the Secretary for clarity may be made, as provided under section 304(b) of the Magnuson-Stevens Act.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has made a preliminary determination that this proposed rule, subject to NMFS's concern about the proposed increase in the incidental skate wing possession limit, is consistent with the Skate FMP, Amendment 3, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

The Office of Management and Budget has determined that this proposed rule is not significant for the purposes of Executive Order 12866.

The Council prepared an IRFA, as required by section 603 of the Regulatory Flexibility Act (RFA), included in Framework 1 and supplemented by information contained in the preamble to this proposed rule. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section of the preamble and in the **SUMMARY** of this proposed rule. A summary of the IRFA follows. A copy of this analysis is available from the Council (see **ADDRESSES**).

All of the entities (fishing vessels) affected by this action are considered small entities under the Small Business Administration size standards for small fishing businesses ($4.0 million in annual gross sales). Therefore, there are no disproportionate effects on small versus large entities. Information on costs in the fishery is not readily available and individual vessel profitability cannot be determined directly; therefore, expected changes in gross revenues were used as a proxy for profitability.

This action does not introduce any new reporting, recordkeeping, or other compliance requirements. This proposed rule does not duplicate, overlap, or conflict with other Federal rules.

Description and Estimate of Number of Small Entities to Which the Rule Would Apply

The participants in the commercial skate fishery were defined using Northeast dealer reports to identify any vessel that reported having landed 1 lb (0.45 kg) or more of skates during calendar year 2010. These dealer reports identified 690 vessels that landed skates for the skate wing market in states from Maine to North Carolina out of 2,607 vessels that held a Federal skate permit. Of the 690 vessels that landed at least 1 lb (0.45 kg) of skates for the wing market, 592 vessels landed at least some amount of skates in wing form, and these vessels would be affected by the proposed change to allow vessels landing skate wings to also land the associated carcasses for sale as bait.

Economic Impacts of the Proposed Action Compared to Significant Non-Selected Alternatives

The purpose of Framework 1 is to adjust the possession limits affecting the skate wing fishery in order to extend the duration of the fishing season during which the fishery could land skate wings at "directed" levels (*i.e.,* before the possession limits are reduced to incidental landings levels), while constraining the overall skate wing landings to remain within the TAL. To achieve these ends, the Council considered several alternatives for each of three principal management measures: (1) The primary possession limit affecting the directed skate wing fishery; (2) the trigger point (as a percentage of the TAL) at which the primary possession limit is reduced to a lower, incidental level of allowable landings; and (3) the possession limit that would be imposed once the possession limit trigger is reached.

The Council considered several alternatives for the primary skate wing possession limit: (1) 5,000 lb (2,268 kg) of wings per trip (the status quo); (2) 4,100 lb (1,860 kg) of wings per trip; (3) 3,200 lb (1,451 kg) of wings per trip; (4) 2,600 lb (1,179 kg) of wings per trip; and (5) the proposed action of a 2,600-lb (1,179-kg) possession limit from May 1 through August 31, and a 4,100-lb (1,860-kg) possession limit from September 1 through April 30. The challenge in achieving the objective of this action is to determine a possession limit low enough to prolong the directed fishing season without substantially reducing the efficacy of the skate wing fishery by choosing a possession limit too low to make profitable fishing trips. Compared to the other alternatives considered, the proposed action is expected to maximize profitability for the skate wing fishery by constraining landings during the spring and summer months (May–August) when demand and price are generally lower (average of $0.33/lb during 2009 and 2010), preserving more of the available TAL for the fall and early winter months when demand and price are generally higher (average of $0.64/lb during 2009 and 2010) and allowing higher levels of landings during this time.

In addition to changing the primary possession limit, the Council also considered three alternatives for the trigger point at which the possession limit is reduced: (1) 80 percent of the TAL (the status quo); (2) 85 percent of the TAL; and (3) 75 percent of the TAL. The higher the trigger percentage, the longer the directed fishing season would last before the possession limit is reduced; however, because landings continue—at albeit reduced rates due to the lower possession limit—the desire to extend the directed fishing season must be balanced with the need to prevent the overall landings from exceeding the TAL. The Council's analysis shows that a 5-percent change in the trigger point could make a 2-week difference in the length of the directed fishing season. The likelihood of exceeding the TAL at the different potential trigger points depends, in part, on the incidental possession limit that would be imposed once the trigger is reached.

The Council considered three alternatives for the incidental possession limit: (1) 500 lb (227 kg) of skate wings per trip (the status quo); (2) 750 lb (340 kg) of skate wings per trip; and (3) 1,250 lb (567 kg) of skate wings per trip. Although the Council recommended increasing the incidental possession limit to 1,250 lb (567 kg) per trip in order to increase the potential revenue of vessels landing skates after the possession limit is reduced, NMFS intends to disapprove this particular proposal as inconsistent with the requirement to ensure that overall skate landings do not exceed the available TAL (the Council's analysis indicates that this combination of measures would result in landings exceeding the TAL by more than 7 percent). The Council's analysis shows that the overarching purpose of Framework 1 to lengthen the directed fishing season while not exceeding the TAL is best served by increasing the trigger point to 85 percent of the TAL but maintaining the status quo incidental possession limit of 500 lb (227 kg) of skate wings per trip. Although an increase in the incidental possession limit from 500 lb (227 kg) of skate wings per trip to 1,250 lb (567 kg) of skate wings per trip would increase the potential vessel revenue by up to $250–$500 per trip (based on the average ex-vessel price paid for skate wings in 2009 and 2010), NMFS's disapproval of this measure would impose no additional costs on the affected industry, as the disapproval leaves in place the current 500-lb (227-kg) possession limit.

In addition to the primary alternatives considered in this action, the Council also considered a change in the regulations to allow skate carcasses to be landed rather than discarded at sea. This proposed measure is expected to have no effect on the overall mortality of skates caught, but could result in marginal increases in per trip fishing revenue for vessels that cut skate wings at sea and land the remaining carcasses for sale as lobster bait (estimates range from approximately $360 per trip at the 2,600-lb (1,179-kg) possession limit to approximately $570 per trip at the 4,100-lb (1,860-kg) possession limit). Because the only significant alternative considered in this case is the status quo, under which the landing of skate carcasses would continue to be prohibited, the Council's proposed action in this case maximizes the potential revenue available to the fishing industry.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: March 29, 2011.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

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

2. In § 648.322, revise paragraph (b) to read as follows:

§ 648.322 Skate allocation, possession, and landing provisions.

* * * * *

(b) *Skate wing possession and landing limits.* A vessel or operator of a vessel that has been issued a valid Federal skate permit under this part, provided the vessel fishes under an Atlantic sea scallop, NE multispecies, or monkfish DAS as specified at §§ 648.53, 648.82, and 648.92, respectively, or is also a limited access multispecies vessel participating in an approved sector described under § 648.87, unless otherwise exempted under § 648.80 or paragraph (c) of this section, may fish for, possess, and/or land up to the allowable trip limits of skate wings (with appropriate whole weight equivalents) specified as follows:

(1) Up to 2,600 lb (1,179 kg) of skate wings (5,902 lb (2,677 kg) whole weight) per trip from May 1 through August 31, and 4,100 lb (1,860 kg) of skate wings (9,307 lb (4,222 kg) whole weight) per trip from September 1 through April 30, except for a vessel fishing on a declared NE multispecies Category B DAS described under § 648.85(b), which is limited to no more than 220 lb (100 kg) of skate wings (500 lb (227 kg) whole weight) per trip (or any prorated combination of skate wings and whole skates based on the conversion factor for wing weight to whole weight of 2.27—for example, 100 lb (45.4 kg) of skate wings × 2.27 = 227 lb (103.1 kg) of whole skates).

(2) *In-season adjustment of skate wing possession limits.* When the Regional Administrator projects that 85 percent of the annual skate wing fishery TAL has been landed, the Regional Administrator shall, through a notice in the **Federal Register** consistent with the Administrative Procedure Act, reduce the skate wing trip limit to 1,250 lb (567 kg) of skate wings (2,837 lb (1,287 kg) whole weight, or any prorated combination of skate wings and whole skates based on the conversion factor for wing weight to whole weight of 2.27) for the remainder of the fishing year, unless such a reduction would be expected to prevent attainment of the annual TAL.

(3) *Incidental possession limit for vessels not under a DAS.* A vessel issued a Federal skate permit that is not fishing under an Atlantic sea scallop, NE multispecies, or monkfish DAS as

specified at §§ 648.53, 648.82, and 648.92, respectively, or is a limited access multispecies vessel participating in an approved sector described under § 648.87 but not fishing on one of the DAS specified at §§ 648.53, 648.82, or 648.92, may retain up to 500 lb (227 kg) of skate wings or 1,135 lb (515 kg) of whole skate, or any prorated combination of skate wings and whole skates based on the conversion factor for wing weight to whole weight of 2.27, per trip.

(4) *Allowable forms of skate landings.* Except for vessels fishing under a skate bait letter of authorization as specified at § 648.322(c), a vessel may possess and/or land skates as wings only (wings removed from the body of the skate and the remaining carcass discarded), wings with associated carcasses possessed separately (wings removed from the body of the skate but the associated carcass retained on board the vessel), or in whole (intact) form, or any combination of the three, provided that the weight of the skate carcasses on board the vessel does not exceed 1.27 times the weight of skate wings on board. When any combination of skate wings, carcasses, and whole skates are possessed and/or landed, the applicable possession or landing limit shall be based on the whole weight limit, in which any wings are converted to whole weight using the wing to whole weight conversion factor of 2.27. For example, if the vessel possesses 100 lb (45.4 kg) of skate wings, the whole weight equivalent would be 227 lb (103.0 kg) of whole skates (100 lb (45.4 kg) × 2.27), and the vessel could possess up to 127 lb (57.6 kg) of skate carcasses (100 lb (45.4 kg) of skate wings × 1.27). A vessel may not possess and/or land skate carcasses and only whole skates.

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[FR Doc. 2011–7949 Filed 4–1–11; 8:45 am]

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Notices

Federal Register
Vol. 76, No. 64
Monday, April 4, 2011

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2010–0119]

Notice of Request for Extension of Approval of an Information Collection; Gypsy Moth Identification Worksheet

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with the gypsy moth program.

DATES: We will consider all comments that we receive on or before June 3, 2011.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2010-0119* to submit or view comments and to view supporting and related materials available electronically.
- *Postal Mail/Commercial Delivery:* Please send one copy of your comment to Docket No. APHIS–2010–0119, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2010–0119.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at *http://www.aphis.usda.gov.*

FOR FURTHER INFORMATION CONTACT: For information on the gypsy moth program, contact Mr. Paul Chaloux, National Program Manager, Gypsy Moth Program, Emergency and Domestic Programs, PPQ, APHIS, 4700 River Road Unit 137, Riverdale, MD 20737–1231; (301) 734–0917. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

SUPPLEMENTARY INFORMATION:

Title: Gypsy Moth Identification Worksheet.

OMB Number: 0579–0104.

Type of Request: Extension of approval of an information collection.

Abstract: Under the Plant Protection Act (7 U.S.C. 7701 *et seq.*), the United States Department of Agriculture (USDA), either independently or in cooperation with the States, is authorized to carry out operations or measures to detect, eradicate, suppress, control, prevent, or retard the spread of plant pests new to the United States or not widely distributed throughout the United States. The Animal and Plant Health Inspection Service (APHIS), USDA, has delegated authority to carry out this mission.

As part of the mission, Plant Protection and Quarantine (PPQ), APHIS, engages in detection surveys to monitor for the presence of, among other things, the European gypsy moth and the Asian gypsy moth. The European gypsy moth is one of the most destructive pests of fruit and ornamental trees as well as hardwood forests. First introduced into the United States in Medford, Massachusetts, in 1869, the European gypsy moth has gradually spread to infest the entire northeastern portion of the country.

Heavily infested areas are inundated with actively crawling larvae, which cover trees, fences, vehicles, and houses during their search for food. Entire areas may be stripped of all foliage, often resulting in heavy damage to trees. The damage can have long-lasting effects, depriving wildlife of food and shelter, and severely limiting the recreational value of forested areas.

The Asian gypsy moth is an exotic strain of gypsy moth that is closely related to the European variety already established in the United States. While the Asian gypsy moth has been introduced into the United States on several occasions, it is currently not established in this country. Due to behavioral differences, this strain is considered to pose an even greater threat to trees and forested areas.

Unlike the flightless European gypsy moth female adult, the Asian gypsy moth female adult is capable of strong directed flight between mating and egg deposition, significantly increasing its ability to spread over a much greater area and become widely established within a short time. In addition, Asian gypsy moth larvae feed on a much wider variety of hosts, allowing them to exploit more areas and cause more damage than the European gypsy moth.

To determine the presence and extent of a European gypsy moth or an Asian gypsy moth infestation, APHIS sets traps in high-risk areas to collect specimens. Once an infestation is identified, control and eradication work (usually involving State cooperation) is initiated to eliminate the moths.

APHIS personnel, with assistance from State agriculture personnel, check traps for the presence of gypsy moths. If a suspicious moth is found in the trap, it is sent to APHIS laboratories at the Otis Methods Development Center in Massachusetts so that it can be correctly identified through DNA analysis. (Since the European gypsy moth and the Asian gypsy moth are strains of the same species, they cannot be visually distinguished from each other. DNA analysis is the only way to accurately identify these insects.)

The PPQ or State employee submitting the moth for analysis completes a gypsy moth identification worksheet (PPQ Form 305), which accompanies the insect to the laboratory. The worksheet enables both Federal and State regulatory officials to identify and track specific specimens through the DNA identification tests that we conduct.

The information provided by the gypsy moth identification worksheets is vital to our ability to monitor, detect, and eradicate gypsy moth infestations.

We are asking the Office of Management and Budget (OMB) to approve our use of this information collection activity for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the 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 our estimate of the burden of the 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, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.,* permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.1708333 hours per response.

Respondents: State cooperators.

Estimated annual number of respondents: 120.

Estimated annual number of responses per respondent: 2.

Estimated annual number of responses: 240.

Estimated total annual burden on respondents: 41 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

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.

Done in Washington, DC, this 29th day of March 2011.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–7895 Filed 4–1–11; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2009–0097]

Notice of Decision To Issue Permits for the Importation of Fresh Figs From Chile into the Continental United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public of our decision to begin issuing permits for the importation into the continental United States of fresh figs from Chile. Based on the findings of a pest risk analysis, which we made available to the public for review and comment through a previous notice, we believe that the application of one or more designated phytosanitary measures will be sufficient to mitigate the risks of introducing or disseminating plant pests or noxious weeds via the importation of fresh figs from Chile.

DATES: *Effective Date:* April 4, 2011.

FOR FURTHER INFORMATION CONTACT: Ms. Claudia Ferguson, Regulatory Policy Specialist, Regulatory Coordination and Compliance, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1231; (301) 734–0754.

SUPPLEMENTARY INFORMATION:

Under the regulations in "Subpart—Fruits and Vegetables" (7 CFR 319.56–1 through 319.56–50, referred to below as the regulations), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture prohibits or restricts the importation of fruits and vegetables into the United States from certain parts of the world to prevent plant pests from being introduced into and spread within the United States.

Section 319.56–4 of the regulations contains a performance-based process for approving the importation of commodities that, based on the findings of a pest risk analysis, can be safely imported subject to one or more of the designated phytosanitary measures listed in paragraph (b) of that section. Under that process, APHIS publishes a notice in the **Federal Register** announcing the availability of the pest risk analysis that evaluates the risks associated with the importation of a particular fruit or vegetable. Following the close of the 60-day comment period, APHIS may begin issuing permits for importation of the fruit or vegetable subject to the identified designated measures if: (1) No comments were received on the pest risk analysis; (2) the comments on the pest risk analysis revealed that no changes to the pest risk analysis were necessary; or (3) changes to the pest risk analysis were made in response to public comments, but the changes did not affect the overall conclusions of the analysis and the Administrator's determination of risk.

In accordance with that process, we published a notice [1] in the **Federal Register** on February 9, 2010 (75 FR 6344–6345, Docket No. APHIS–2009–0097), in which we announced the availability, for review and comment, of two pest risk analyses that evaluate the risks associated with the importation into the continental United States of fresh figs, pomegranates, and baby kiwi fruit from Chile. We solicited comments on the notice for 60 days ending on April 12, 2010. We received 25 comments by that date, from port terminal operators, growers' associations, trade associations, a fumigation service, a State agriculture department, a foreign government agency, a foreign trade association, and several produce importers, exporters, and wholesalers. Most of the commenters agreed that the mitigation measures described in the pest risk analysis would be adequate. However, three commenters raised concerns about the pest risk analyses or proposed mitigation measures. The issues raised by two of those commenters were addressed in a notice of decision to issue permits for the importation of fresh pomegranates and baby kiwi from Chile into the United States,[2] published in the **Federal Register** on May 12, 2010 (75 FR 26707–26708).

The third commenter raised several concerns regarding the risks associated with the importation of fresh figs from Chile. In order to give ourselves adequate time to explore the issues raised by the commenter, we delayed our decision on figs and addressed only pomegranates and baby kiwi from Chile in our May 2010 notice.

The commenter stated that fumigation of fresh figs in the recommended treatment may not kill eggs of the insects of concern because eggs would most likely be deposited in the tissues of the fruit through the ostiole of the fig. The commenter was concerned that the treatment would not penetrate the fruit and kill the pest.

While the commenter did not specify a particular insect of concern, the pest

[1] To view the February 2010 notice and the comments we received, and the May 2010 notice, go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2009-0097*.

[2] *See* footnote 1.

risk assessment identified Mediterranean fruit fly (*Ceratitis capitata*) and the Chilean red mite (*Brevipalpis chilensis*) as pests having a high risk potential. Since the pest risk assessment was prepared, all of Chile has been recognized as a pest-free area for Mediterranean fruit fly. The treatment schedule that would be required for figs has been found to be highly effective for all stages of Chilean red mite on grapes, and the efficacy can be extrapolated to include figs. Methyl bromide is a gas and can penetrate the ostiole of the fig. Furthermore, the Chilean red mite is a surface feeder that lays its eggs in cracks and crevices that are exposed to the air and, thus, to methyl bromide when fumigated.

The commenter stated that the diseases of fresh figs in Chile should be compared to the diseases in the United States to determine whether or not they are the same strain. The commenter was concerned that the taxa of microbial and fungal pathogens identified as present in Chile might, if incompletely identified, be different from taxa already present in the United States, and that the pest risk assessment would not, therefore, have taken the risk associated with those specific pathogens into account.

We agree that different strains of pathogens that are epidemiologically significant may exist; however, we found no information indicating that this was the case for any of the pathogens known to be present in both Chile and the United States. When assessing risk, we may consider incompletely identified taxa at a higher taxonomic level if the higher taxon (i.e., the entire genus or family) is not present in the United States, or if specific evidence indicates that the unidentified taxon is different from the ones in the United States. In this case, because we found no evidence that these incompletely identified taxa are different from the taxa present in the United States, we did not analyze them further. If pests identified to more specific taxa are intercepted in the future, we may reevaluate their risk.

The commenter expressed concern that the proposed methyl bromide treatment schedule could produce an unpalatable fruit, which might result in a reduced market price for all figs, imported and domestic. The commenter also expressed concern that if a lower dose was used to treat fresh figs to improve their shelf life, there is still a risk that the mites could survive.

APHIS does not alter treatment doses due to phytotoxicity to the commodity. Treatments for the pests are based on research on the individual pests and are not changed unless the change is supported by data showing the efficacy of the new dose.

The commenter expressed concern that the generic surface pest treatment schedules, including the one proposed for fresh figs from Chile, might not be adequate to kill the Chilean red mite. The commenter stated that the California cherry and strawberry industries both had to use higher doses of methyl bromide to solve mite problems in their export programs.

The Chilean red mite, which belongs to the family Tenuipalpidae, is not present in California; the mites in California produce are likely to be spider mites of the family Tetranychidae, and would require different treatment. The treatment schedule proposed for figs from Chile has been shown to be effective for Chilean red mite. As with other fruit imports, we will monitor the pest levels and if we determine that risks are such as would require adjusting the treatment dose or duration, we will take the appropriate action.

The commenter stated that a treatment schedule specific to figs should be established for the treatment of Mediterranean fruit fly, for purposes of phytotoxicity and the tolerance of Mediterranean fruit fly relative to other target insects, including mites.

As we explained above, since the publication of the pest risk assessment, all of Chile has been recognized as a pest-free area for Mediterranean fruit fly. There is no need to develop a specific treatment schedule for use on figs from that country.

Therefore, in accordance with the regulations in § 319.56–4(c)(2)(ii), we are announcing our decision to begin issuing permits for the importation into the continental United States of fresh figs from Chile subject to the following phytosanitary measures:

- Each shipment of figs must be accompanied by a phytosanitary certificate. The phytosanitary certificate must be issued by the national plant protection organization of Chile.
- The shipment must be fumigated with methyl bromide using treatment schedule T–101–i–2–1 in accordance with 7 CFR part 305.
- The figs must be a commercial consignment as defined in 7 CFR 319.56–2.

These conditions will be listed in the Fruits and Vegetables Import Requirements database (available at *http://www.aphis.usda.gov/favir*). In addition to those specific measures, the fresh figs will be subject to the general requirements listed in § 319.56–3 that are applicable to the importation of all fruits and vegetables.

Authority: 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 29th day of March 2011.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–7896 Filed 4–1–11; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Shasta County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Shasta County Resource Advisory Committee (RAC) will meet at the USDA Service Center in Redding, California, on April 27, 2011, from 8:30 a.m. to 12 noon. The purpose of this meeting is to discuss project updates and proposals, and information on monitoring efforts for the upcoming year.

DATES: Wednesday, April 27 at 8:30 a.m.

ADDRESSES: The meeting will be held at the USDA Service Center, 3644 Avtech Parkway, Redding, California 96002.

FOR FURTHER INFORMATION CONTACT: Designated Federal Official, Donna Harmon at (530) 226–2595 or *dharmon@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Public input sessions will be provided and individuals will have the opportunity to address the Shasta County Resource Advisory Committee.

Dated: March 28, 2011.

Arlen P. Cravens,

Acting Forest Supervisor, Shasta-Trinity National Forest.

[FR Doc. 2011–7864 Filed 4–1–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Ouachita-Ozark Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Ouachita-Ozark Resource Advisory Committee will meet in Barling, Arkansas. The committee is

meeting as authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) and in compliance with the Federal Advisory Committee Act. The purpose is to discuss general information, review proposals, review updates on current or completed Title II projects, and to set next meeting agenda.

DATES: The meeting will be held on May 3, 2011, beginning at 6 p.m. and ending at approximately 9 p.m.

ADDRESSES: The meeting will be held at the Janet Huckabee Arkansas River Valley Nature Center, 8300 Wells Lake Road, Barling, Arkansas.

Written comments should be sent to: Caroline Mitchell, Committee Coordinator, USDA, Ouachita National Forest, P.O. Box 1270, Hot Springs, AR 71902. Comments may also be sent via e-mail to *carolinemitchell@fs.fed.us* or via facsimile to 501–321–5399.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at 100 Reserve Street, Hot Springs, AR 71901. Visitors are encouraged to call ahead to 501–321–5202 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Caroline Mitchell, Committee Coordinator, USDA, Ouachita National Forest, P.O. Box 1270, Hot Springs, AR 71902. (501–321–5318). Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff, Committee members, and elected officials. However, persons who wish to bring matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Individuals wishing to speak or propose agenda items must send their names and proposals to Bill Pell, DFO, P.O. Box 1270, Hot Springs, AR 71902.

Dated: March 29, 2011.

Bill Pell,

Designated Federal Official.

[FR Doc. 2011–7873 Filed 4–1–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Announcement of Grant Application Deadlines and Funding Levels

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of Funds Availability (NOFA).

SUMMARY: The Rural Utilities Service (RUS), an agency of the United States Department of Agriculture, announces the Delta Health Care Services Grant Program application window. In addition to announcing the application window, RUS announces the availability of $3,000,000 in grant funds to be competitively awarded for the Delta Health Care Services Grant Program.

DATES: You may submit completed applications for grants according to the following deadlines:

- Paper copies must carry proof of shipping *no later* than June 3, 2011 to be eligible for grant funding. Late applications are not eligible for grant funding.
- Electronic copies must be received by June 3, 2011.

ADDRESSES: You may obtain application guides and materials for the Delta Health Care Services grants the following ways:

- The Internet at the RUS Telecommunications Programs

Web site: http://www.rurdev.usda.gov/utp_deltahealthcare.html.

- You may also request application guides and materials from RUS by contacting, RUS Office of the Program Advisor at (202) 720–8427.

You may submit:

- Completed paper applications for Delta Health Care Services grants to the Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., Room 2919, STOP 1541, Washington, DC 20250–1550. Applications should be marked "*Attention:* Program Advisor—Telecommunications Program."
- Electronic grant applications at *http://www.grants.gov/* (Grants.gov), following the instructions you find on that Web site.

FOR FURTHER INFORMATION CONTACT: Craig R. Wulf, Program Advisor—Telecommunications Program, Rural Utilities Service, 1400 Independence Ave., SW., Room 2919, STOP 1541, Washington, DC 20250–1550; *telephone*: 202–720–8427, *fax:* 202–720–2734.

EO 13175 Consultations and Coordination With Indian Tribal Governments

To introduce tribes and tribal leaders in the Delta Region to this program USDA hosted a teleconference on December 7, 2010. USDA extended an invitation to Tribal Leaders of the six Federally recognized Tribes in Mississippi, Louisiana, and Alabama on November 30, 2010. Through this call USDA aimed to review, discuss, and open the door for consultation on this program, in case the tribes brought forward any unanticipated concerns regarding the draft NOFA provisions of the Delta Health Care Services Grant Program, authorized under Section 379G of the Consolidated Farm and Rural Development Act. Three of the six tribes participated on the teleconference on December 7, 2010. It was explained that eligible grant applicants are limited to consortiums or groups of regional institutions of higher education, academic health and research institutes, and economic development entities located in the Delta Region that have experience in addressing the health care issues in the region. It was also articulated that eligible consortiums may include participation with Indian Tribes. The Tribal Leaders did not express any perceived negative impact regarding the draft, and were given appropriate Rural Development contact information should they have any future concerns regarding the NOFA. As a result of this teleconference, USDA has assessed the impact of this NOFA on Indian Tribal Governments in the Delta Region, and has concluded that this NOFA will not negatively affect the Federally recognized Tribes in the region, or impose substantial direct compliance costs on Indian Tribal Governments, nor preempt tribal law.

Paperwork Reduction Act

The Paperwork Reduction Act requires Federal Agencies to seek and obtain Office of Management and Budget (OMB) approval before undertaking a collection of information directed to ten or more persons. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the agency conducted an analysis to determine the universe of respondents that could meet the eligibility requirements to apply for the Delta Health Care Services Grant Program. It was determined that the eligible number of entities in the Delta Region was fewer than nine and in accordance with 5 CFR 1320 the agency has not obtained OMB approval of the

information collection associated with this NOFA.

SUPPLEMENTARY INFORMATION:

Overview

Federal Agency: Rural Utilities Service (RUS).

Funding Opportunity Title: Delta Health Care Services Grant Program.

Announcement Type: Initial announcement.

Catalog of Federal Domestic Assistance (CFDA) Number: 10.874.

Due Date for Applications: June 3, 2011.

Items in SUPPLEMENTARY INFORMATION

I. Funding Opportunity

Advanced telecommunications services play a vital role in the economic development, education, and health care of rural America. The Delta Health Care Services Grant Program is designed to provide financial assistance to address the continued unmet health needs in the Delta Region through cooperation among health care professionals, institutions of higher education, research institutions, and other individuals and entities in the Delta Region. Grant funds may be utilized for the development of health care services; health education programs; health care job training programs; and for the development and expansion of public health-related facilities in the Delta Region. Grants will be awarded to eligible entities in the Delta Region serving communities of no more than 50,000 inhabitants to help to address the long standing and unmet health needs of the region.

II. Definitions

The terms and conditions provided in this NOFA are applicable to and for purposes of this NOFA only.

Consortium means a combination or group of regional institutions of higher education, academic health and research institutes, and economic development entities located in the Delta Region that have experience in addressing the health care issues in the region.

Delta Region means the 252 counties and parishes within the states of Alabama, Arkansas, Illinois, Kentucky, Louisiana, Mississippi, Missouri, and Tennessee that are served by the Delta Regional Authority. (The Delta Region may be adjusted by future Federal statute.)

Distance learning means a telecommunications link to an end user through the use of equipment to: Provide educational programs, instruction, or information originating in one area, whether rural or not, to students and teachers who are located in rural areas; or connect teachers and students, located in one rural area with teachers and students that are located in a different rural area.

Rural area means any area of the United States not included within (a) the boundaries of any incorporated or unincorporated city, village, or borough having a population in excess of 50,000 inhabitants and (b) any urbanized area contiguous and adjacent to a city or town described in clause (a).

RUS, or the Agency, means the Rural Utilities Service.

Telemedicine means a telecommunications link to an end user through the use of eligible equipment which electronically links medical professionals at separate sites in order to exchange health care information in audio, video, graphic, or other format for the purpose of providing improved health care services primarily to residents of rural areas.

III. Award Information

Each entity applying which is not exempted must be registered in the Central Contractors Registration (CCR) prior to submitting an application or Plan for financial assistance and maintain an active CCR registration (review and update on an annual basis) and provide its Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS) number.

RUS is making $3,000,000 available for competitive grants in the Delta Region. The minimum grant amount is $50,000.

Delta Health Care Services grants cannot be renewed. Award documents specify the term of each award. The Agency will make awards and execute documents appropriate to the project prior to any advance of funds to successful applicants. The Agency will consider a one-time request to extend the period for up to 1 year during which grant funding is available.

IV. Eligibility Information

A. Who is eligible for grants?

1. A Consortium, as defined in section II of this NOFA.

2. At least one member of the Consortium must be legally organized as an incorporated organization, or other legal entity, and have legal authority to contract with the Government. Individuals are not eligible for Delta Health Care Services Grant Program financial assistance directly.

3. At least one member of the Consortium must have legal capacity and authority to carry out the purposes of the projects in its application, and to enter into contracts and to otherwise comply with applicable Federal statutes and regulations.

B. What are the basic eligibility requirements for a project?

1. To be eligible for a grant; the project must serve a rural area in the Delta Region, as defined in this NOFA.

2. Grant funds may be used to finance any of the following:

a. Develop health care services;

b. Develop health education programs;

c. Develop health care job training programs;

d. Develop and expand public health-related facilities in the Delta Region to address longstanding and unmet health needs of the region.

3. Applicants are strongly encouraged to emphasize distance learning and/or telemedicine projects in their proposed use of grant funds.

4. All facilities constructed or leased with grant funds must be new equipment.

5. The total amount for salaries and wages, administrative expenses, and recurring operating costs may not exceed 20 percent of the grant funds.

6. Matching contribution: There is no requirement for matching funds in this program.

7. Facilities constructed or acquired before the completed application is approved by RUS are not eligible for grant funds.

V. Application and Submission Information

A. Where To Get Application Information

The application guide and copies of necessary forms and samples for the Delta Health Care Services Grant Program are available from these sources:

• The Internet at *http://www.rurdev.usda.gov/utp_deltahealthcare.html*
• *http://www.grants.gov*, or,
• For paper copies of these materials: call (202) 720–8427.

B. How and Where To Submit an Application

You may file an application in either paper or electronic format. Whether you file a paper or an electronic application, you will need a DUNS number.

1. DUNS Number

As required by the OMB, all applicants for grants must supply a Dun and Bradstreet Data Universal Numbering System (DUNS) number when applying. The Standard Form 424 (SF–424) contains a field for you to use when supplying your DUNS number. Obtaining a DUNS number costs nothing and requires a short telephone call to Dun and Bradstreet. *Please see http://www.grants.gov/applicants/request_duns_number.jsp* for more information on how to obtain a DUNS number or how to verify your organization's number.

2. Central Contractor Registration (CCR)

(a) In accordance with 2 CFR part 25, applicants, whether applying electronically or by paper, must be registered in the CCR prior to submitting an application. Applicants may register for the CCR at *https://www.uscontractorregistration.com/* or by calling 1–877–252–2700. Completing the CCR registration process takes up to five business days, and applicants are strongly encouraged to begin the process well in advance of the deadline specified in this notice.

(b) The CCR registration must remain active, with current information, at all times during which an entity has an application under consideration by an agency or has an active Federal Award. To remain registered in the CCR database after the initial registration, the applicant is required to review and update, on an annual basis from the date of initial registration or subsequent updates, its information in the CCR database to ensure it is current, accurate and complete.

For paper applications, send or deliver the applications by the U.S. Postal Service (USPS) or courier delivery services to the RUS receipt point set forth below. RUS will not accept applications by fax or e-mail. Mail or ensure delivery of an original paper application (no stamped, photocopied, or initialed signatures) and one copy by the June 3, 2011 to the following address:

Program Advisor, Telecommunications Program, Rural Utilities Service, 1400 Independence Avenue, SW., STOP 1541, Room 2919, Washington, DC 20250–1550.

The application and any materials sent with it become Federal records by law and cannot be returned to you.

C. What constitutes a completed application?

1. Detailed information on each item required can be found in the Delta Health Care Services Grant Program application guide. The program's application guide provides specific guidance on each of the items listed and also provides all necessary forms and sample worksheets.

2. A completed application must include the following: documentation, studies, reports, and information listed below, in form satisfactory to RUS. Applications should be prepared in conformance with applicable USDA regulations including 7 CFR parts 3015, 3016, and 3019. Applicants must use the application guide for this program containing instructions and all necessary forms, as well as other important information, in preparing their application. Completed applications must include the following:

a. *An Application for Federal Assistance.* A completed Standard Form (SF) 424.

b. *Evidence of eligibility.* Evidence of the applicant's eligibility to apply under this Notice, demonstrating that the applicant is a consortium as defined in this Notice.

c. *A project abstract.* A one-page summary not to exceed one page, suitable for dissemination to the public and to Congress.

d. *Executive summary.* An executive summary of the project describing its purpose, not to exceed two pages.

e. *Scoring documentation.* The grant applicant must address and provide documentation on how it meets each of the scoring criteria, specifically the rurality of the project area and communities served, the community needs and benefits derived from the project, and project management and organization capability.

f. *Service area maps.* Maps with sufficient detail to show the area that will benefit from the proposed facilities and services, and the location of facilities purchased with grant funds.

g. *Scope of work.* The scope of work must include (1) the specific activities and services, such as programs and training, to be performed under the project, (2) the facilities to be purchased or constructed, in addition to who will carry out the activities and services, and specific time frames for completion and (3) documentation regarding how the applicant solicited input for the project from local governments, public health care providers, and other entities in the Delta Region.

h. *Budget.* The applicant must provide a budget showing the line item costs for all capital and operating expenditures eligible for the grant funds, and other sources of funds necessary to complete the project.

i. *Financial information and sustainability.* The applicant must provide current financial statements and a narrative description demonstrating sustainability of the project, all of which show sufficient resources and expertise to undertake and complete the project and how the project will be sustained following completion.

j. *Statement of experience.* The applicant must provide a written narrative describing its demonstrated capability and experience in addressing the health care issues in the Delta Region and in managing and operating a project similar to the proposed project.

k. *Evidence of legal authority and existence.* At least one member of the Consortium must provide evidence of its legal existence and authority to enter into a grant agreement with the Rural Utilities Service and perform the activities proposed under the grant application.

l. *Compliance with other Federal statutes.* The applicant must provide evidence or certification that it is in compliance with all applicable Federal statutes and regulations, including, but not limited to the following (sample certifications are provided in the application guide.):

(1) Equal Opportunity and Nondiscrimination;

(2) Architectural barriers;

(3) Flood hazard area precautions;

(4) Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;

(5) Drug-Free Workplace Act of 1998 (41 U.S.C. 701 *et seq.*);

(6) Debarment, Suspension; and Other Responsibility Matters—Primary Covered Transactions;

(7) Lobbying for Contracts, Grants, Loans, and Cooperative Agreements (31 U.S.C. 1352).

m. *Environmental impact and historic preservation.* The applicant must provide details of the project's impact on the environment and historic preservation, and comply with 7 CFR part 1794, which contains the Agency's policies and procedures for implementing a variety of Federal statutes, regulations, and executive orders generally pertaining to the

protection of the quality of the human environment. This must be contained in a separate section entitled "Environmental Impact of the Project" and must include the Environmental Questionnaire/Certification describing the impact of the project. The Environmental Questionnaire/Certification is available on the RUS Telecommunications Programs Web site at: *http://www.rurdev.usda.gov/utp_deltahealthcare.html.* Submission of the Environmental Questionnaire/Certification alone does not constitute compliance with 7 CFR part 1794.

VI. Application Review Information

A. Criteria

1. Grant applications are scored competitively and subject to the criteria listed below.

2. Grant application scoring criteria are detailed in the Delta Health Care Services Grant Application Guide. There are 100 points available, broken down as follows:

a. The Rurality of the Project area and communities served. (up to 40 points);

b. The Community Needs and Benefits Derived from the project. (up to 45 points); and

c. The Project Management and Organization capability. (up to 15 points).

B. Grant Review Standards

1. All applications for grants must be delivered to RUS at the address specified in this notice, or submitted electronically to *http://www.grants.gov/* (Grants.gov) to be eligible for funding. RUS will review each application for conformance with the provisions of this part. RUS may contact the applicant for additional information or clarification.

2. Applications conforming with this part will be evaluated competitively by RUS employees, and will be awarded points as described in the Delta Health Care Services Grant Application Guide. Applications will be ranked and grants awarded in rank order until all grant funds are expended.

3. Regardless of the score an application receives, if RUS determines that the Project is technically or financially infeasible, the Agency will notify the applicant, in writing, and the application will be returned and will not be considered for funding.

C. Scoring Guidelines

1. The applicant's self scores in Rurality will be checked and, if necessary, corrected by RUS.

2. The Community Needs and Benefits derived from the project score will be determined by RUS based on information presented in the application. The Community Needs and Benefits score is a subjective score based on the reviewer's assessment of the supporting arguments made in the application. The score aims to assess how the project's purpose and goals benefit the residents in the Delta Region.

3. The Project Management and Organization Capability score will be determined by RUS based on information presented in the application. RUS will evaluate the applicant's experience, past performance, and accomplishments addressing health care issues to ensure effective project implementation.

D. Selection Process

Grant applications are ranked by final score. RUS selects applications based on those rankings, subject to availability of funds. Rural Development has the authority to limit the number of applications selected in any one state, or from any applicant.

VII. Award Administration Information

A. Award Notices

RUS recognizes that each funded project is unique, and therefore may attach conditions to different projects' award documents. The Agency generally notifies applicants whose projects are selected for awards by faxing an award letter. The Agency follows the award letter with a grant agreement that contains all the terms and conditions for the grant. An applicant must execute and return the grant agreement, accompanied by any additional items required by the grant agreement.

B. Administrative and National Policy Requirements

The items listed in Section V of this notice and the Delta Health Care Services Grant Application Guide and accompanying materials implement the appropriate administrative and national policy requirements.

C. Performance Reporting

All recipients of Delta Health Care Services Grant Program financial assistance must provide annual performance activity reports to RUS until the project is complete and the funds are expended. A final performance report is also required; the final report may serve as the last annual report. The final report must include an evaluation of the success of the project.

D. Recipient and Subrecipient Reporting

The applicant must have the necessary processes and systems in place to comply with the reporting requirements for first-tier sub-awards and executive compensation under the Federal Funding Accountability and Transparency Act of 2006 in the event the applicant receives funding unless such applicant is exempt from such reporting requirements pursuant to 2 CFR part 170, 170.110(b). The reporting requirements under the Transparency Act pursuant to 2 CFR part 170 are as follows:

1. First Tier Sub-Awards of $25,000 or more in non-Recovery Act funds (unless they are exempt under 2 CFR part 170) must be reported by the Recipient to *http://www.fsrs.gov* no later than the end of the month following the month the obligation was made.

2. The Total Compensation of the Recipient's Executives (5 most highly compensated executives) must be reported by the Recipient (if the Recipient meets the criteria under 2 CFR part 170) to *http://www.ccr.gov* by the end of the month following the month in which the award was made.

3. The Total Compensation of the Subrecipient's Executives (5 most highly compensated executives) must be reported by the Subrecipient (if the Subrecipient meets the criteria under 2 CFR part 170) to the Recipient by the end of the month following the month in which the subaward was made.

VIII. Agency Contacts

A. *Web site: http://www.rurdev.usda.gov/Utilities_LP.html.* The Web site maintains up-to-date resources and contact information for the Delta Health Care Services Grant Program.

B. *Phone:* 202–720–8427.

C. *Fax:* 202–720–2734.

D. *Main point of contact:* Program Advisor, Telecommunications Program, RUS.

Dated: March 28, 2011.

Jonathan Adelstein,

Administrator, Rural Utilities Service,

[FR Doc. 2011–7829 Filed 4–1–11; 8:45 am]

BILLING CODE 3410–15–P

ARMED FORCES RETIREMENT HOME

Senior Executive Service; Combined Performance Review Board (PRB)

AGENCY: Armed Forces Retirement Home.

ACTION: Notice of Members of the Armed Forces Retirement Home Review Board (PRB).

SUMMARY: Pursuant to U.S.C. 431(c)(4), this notice announces the appointment of members of the combined PRB for the Armed Forces Retirement Home. The

Board reviews the performance appraisals of career and non-career senior executives. The Board recommendations regarding proposed performance appraisals, ratings, bonuses and other appropriate personnel actions.

Composition of PRB: The Board shall consist of at least three voting members. In the case of an appraisal appointee, more than half of the members shall consist of career appointees. The names and titles of the PRB members are as follows:

Primary Members

Cynthia Z. Springer, Executive Director, Administrative Resource Center, Bureau of Public Debt Debra L. Hines, Assistant Commissioner, Office of Public Debt Accounting, Bureau of Public Debt Kimberly A. McCoy, Assistant Commissioner, Office of Information Technology, Bureau of Public Debt.

Alternate Members

Keith Rake, Deputy Executive Director, Administrative Resource Center, Bureau of Public Debt Matt Miller, Deputy Assistant Commissioner, Office of Information Technology, Bureau of Public Debt.

DATES: Membership is effective on the date of this notice.

FOR FURTHER INFORMATION CONTACT: Steven McManus, Acting Chief Operating Officer, Armed Forces Retirement Home, Box 1303, Washington, DC 20011, (202) 730–3533.

This notice does not meet the Armed Forces Retirement Home's criteria for significant regulations.

Dated: March 17, 2011.

Steve McManus,

Acting Chief Operating Officer, Armed Forces Retirement Home.

[FR Doc. 2011–7719 Filed 4–1–11; 8:45 am]

BILLING CODE 8250–01–M

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

Proposed Information Collection; Comment Request; Survey: Expenditures Incurred by Recipients of Biomedical Research and Development Awards From the National Institutes of Health (NIH)

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies 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)).

DATES: Written comments must be submitted on or before 5 p.m. June 3, 2011.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616,14th and Constitution Avenue, NW., Washington, DC 20230, or via e-mail at *dhynek@doc.gov.*

FOR FURTHER INFORMATION CONTACT: Steven Payson, Chief of Research, Government Division (BE–57), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; *phone:* (202) 606–9788; fax: (202) 606–5369; or via e-mail at *steven.payson@bea.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The survey obtains the distribution of expenditures incurred by recipients of biomedical research awards from the National Institutes of Health Research (NIH) and will provide information on how the NIH award amounts are expended across several major categories. This information, along with wage and price data from other published sources, will be used to generate the Biomedical Research and Developmental Price Index (BRDPI). BEA develops this index for NIH under a reimbursable contract. The BRDPI is an index of prices paid for the labor, supplies, equipment, and other inputs required to perform the biomedical research the NIH supports in its intramural laboratories and through its awards to extramural organizations. The BRDPI is a vital tool for planning the NIH research budget and analyzing future NIH programs. A survey of award recipient entities is currently the only means for updating the expenditure categories that are used to prepare the BRDPI.

II. Authority

This survey will be voluntary. The authority for NIH to collect information for the BRDPI is provided in 45 CFR subpart C, Post-Award Requirements, section 74.21. This sets forth explicit standards for grantees in establishing and maintaining financial management systems and records, and section 74.53 which provides for the retention of such records as well as NIH access to such records.

BEA will administer the survey and analyze the survey results on behalf of NIH, through an interagency agreement between the two agencies. The authority for the NIH to contract with DOC to make this collection is the Economy Act (31 U.S.C. 1535 and 1536).

The "Special Studies" authority, 15 U.S.C. 1525 (first paragraph), permits DOC to provide, upon the request of any person, firm or public or private organization (a) Special studies on matters within the authority of the Department of Commerce, including preparing from its records special compilations, lists, bulletins, or reports, and (b) furnishing transcripts or copies of its studies, compilations and other records. BEA has programmatic authority to perform this work pursuant to 15 U.S.C. 1527a. NIH's support for this research is consistent with the Agency's duties and authority under 42 U.S.C. 282.

The information provided by the respondents will be held confidential and be used for exclusively statistical purposes. This pledge of confidentiality is made under the Confidential Information Protection provisions of title V, subtitle A, Public Law 107–347. Title V is the Confidential Information Protection and Statistical Efficiency Act of 2002 (CIPSEA). Section 512 (on Limitations on Use and Disclosure of Data and Information) of the Act, provides that "data or information acquired by an agency under a pledge of confidentiality and for exclusively statistical purposes shall be used by officers, employees, or agents of the agency exclusively for statistical purposes. Data or information acquired by an agency under a pledge of confidentiality for exclusively statistical purposes shall not be disclosed by an agency in identifiable form, for any use other than an exclusively statistical purpose, except with the informed consent of the respondent."

Responses will be kept confidential and will not be disclosed in identifiable form to anyone other than employees or agents of BEA without prior written permission of the person filing the report. By law, each employee as well as each agent is subject to a jail term of up to 5 years, a fine of up to $250,000, or both for disclosing to the public any identifiable information that is reported about a business or institution.

Section 515 of the Information Quality Guidelines applies to this survey. The collection and use of this information complies with all applicable information quality guidelines, *i.e.,* those of the Office of Management and Budget, Department of Commerce, and BEA.

III. Method of Collection

A survey with a cover letter that includes a brief description of, and rationale for, the survey will be sent by e-mail to potential respondents by the first week of June of each year. A report of the respondent's expenditures of the NIH award amounts, following the proposed format for expenditure categories included with the survey form, will be requested to be completed and submitted online no later than 120 days after mailing. Survey respondents will be selected on the basis of award levels, which determine the weight of the respondent in the biomedical research and development price index. Potential respondents will include (1) The top 100 organizations in total awards, which account for about 59 percent of total awards; (2) 40 additional organizations that are not primarily in the "Research and Development (R&D) contracts" category; and (3) 10 additional organizations that are primarily in the "R&D contracts" category.

IV. Data

OMB Number: 0608–0069.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Universities or other organizations that are NIH award recipients.

Estimated Number of Respondents: 90.

Estimated Time per Response: 11 hours and 12 minutes.

Estimated Total Annual Burden: 1,008 hours.

Estimated Total Annual Cost: $0.

V. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the NIH, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: March 29, 2011.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–7804 Filed 4–1–11; 8:45 am]

BILLING CODE 3510–EA–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–822]

Stainless Steel Sheet and Strip in Coils From Mexico: Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to a request from an interested party, the Department of Commerce ("the Department") initiated an administrative review of the antidumping duty order covering stainless steel sheet and strip in coils from Mexico. The period of review is July 1, 2009, through June 30, 2010. Based on the withdrawal of request for review submitted by Allegheny Ludlum Corporation, North American Stainless, and AK Steel Corporation (collectively "petitioners"), we are now rescinding this administrative review.

DATES: *Effective Date:* April 4, 2011.

FOR FURTHER INFORMATION CONTACT: Olga Carter, John Drury or Angelica Mendoza, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–8221, (202) 482–0195 or (202) 482–3019 respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 1, 2010, the Department published a notice announcing an opportunity for interested parties to request an administrative review of the antidumping duty order on stainless steel sheet and strip in coils from Mexico. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 75 FR 38074 (July 1, 2010). On July 30, 2010, petitioners filed a request that the Department initiate an administrative review of the antidumping duty order on stainless steel sheet and strip in coils from Mexico with respect to ThyssenKrupp Mexinox, S.A. de C.V. ("Mexinox"). Based on petitioners' request, on August 31, 2010, the Department published a notice of initiation of the administrative review of the antidumping duty order on stainless steel sheet and strip in coils from Mexico. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Deferral of Initiation of Administrative Review,* 75 FR 53274 (August 31, 2010).

Rescission of Review

In accordance with 19 CFR 351.213(d)(1), the Department will rescind an administrative review, "in whole or in part, if a party that requested a review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review. The Secretary may extend this time limit if the Secretary decides that it is reasonable to do so." On March 21, 2011, petitioners withdrew their request for a review of the order with respect to Mexinox. Although the party submitted a letter withdrawing their review request after the 90-day regulatory deadline, the Department finds it is reasonable to extend the deadline for withdrawing the review request because it has not yet devoted significant time or resources to the review.

Because of the withdrawal of the request for review and because we received no other requests for review, we are rescinding the administrative review of the order with respect to Mexinox. This rescission is in accordance with 19 CFR 351.213(d)(1).

Assessment

The Department will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties on all appropriate entries. For Mexinox, the antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). The Department intends to issue appropriate assessment instructions to CBP 15 days after publication of this notice.

Notifications

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent

assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order ("APO") of their responsibility concerning destruction of proprietary information disclosed under an APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: March 28, 2011.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–7793 Filed 4–1–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–837]

Polyethylene Terephthalate Film, Sheet, and Strip From Taiwan: Amended Final Results of Antidumping Duty Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On February 22, 2011, the Department of Commerce (the Department) published the final results of the antidumping duty administrative review of polyethylene terephthalate film, sheet, and strip (PET Film) from Taiwan.[1] The period of review (POR) is July 1, 2008, through June 30, 2009. We are amending the *Final Results* to correct a ministerial error that was made in the calculation of the antidumping duty margin for Nan Ya Plastics Corporation, Ltd. (Nan Ya), pursuant to section 751(h) of the Tariff Act of 1930, as amended (the Act).

DATES: *Effective Date:* (February 22, 2011)

FOR FURTHER INFORMATION CONTACT: Gene Calvert, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3586.

SUPPLEMENTARY INFORMATION:

Background

On March 8, 2011, pursuant to 19 CFR 351.224(c)(1), Nan Ya filed a timely submission alleging ministerial errors with respect to the Department's use of sales datasets and matching of CONNUMs in the antidumping duty margin calculation for Nan Ya in the *Final Results*.[2] On March 14, 2011, DuPont Teijin Films; Mitsubishi Polyester Film Inc.; SKC, Inc.; and Toray Plastics (America), Inc. (collectively, Petitioners) provided timely rebuttal comments to Nan Ya's model matching allegation.[3]

Scope of the Order

The products covered by the antidumping order are all gauges of raw, pretreated, or primed polyethylene terephthalate film, whether extruded or coextruded. Excluded are metallized films and other finished films that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer more than 0.00001 inches thick. Imports of PET Film are currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item number 3920.62.00. HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of this proceeding is dispositive.

Ministerial Error Allegation

A ministerial error is defined in section 751(h) of the Act as "* * * errors in addition, subtraction, or other arithmetic function, clerical errors resulting from inaccurate copying, duplication, or the like, and any other type of unintentional error which the administering authority considers ministerial."[4] In its Allegation of Ministerial Errors, Nan Ya alleged that: (1) The Department inadvertently used the incorrect U.S. and home market sales datasets to calculate Nan Ya's antidumping duty margin for the final results; and (2) the Department erroneously matched similar home market subject merchandise to U.S. sales where there was no identical sale during the comparison period.[5] Specifically, Nan Ya argues that the last criteria in the Department's model matching hierarchy, surface treatment, has a greater impact on the sales price and the production costs of PET Film compared to the other criteria in the hierarchy, and that it should receive more weight during the model matching process. Petitioners commented only on Nan Ya's model matching allegation, contending that the Department did not commit a ministerial error. According to Petitioners, the Department acted in accordance with its well established methodology with respect to model matching.[6]

Analysis of Allegations

After analyzing the interested parties' allegations and rebuttal comments, we find, in accordance with section 751(h) of the Act and 19 CFR 351.224(e), that with respect to Nan Ya's first allegation, the Department did, indeed, inadvertently use the incorrect sales datasets to calculate Nan Ya's antidumping duty margin for the *Final Results*. In its May 27, 2010 supplemental questionnaire to Nan Ya, the Department requested that Nan Ya and its three U.S. affiliates provide a single, consolidated constructed export price (CEP) sales dataset to report their sales in the U.S. market.[7] However, the three U.S. affiliates stated that they are not affiliated with Nan Ya, and each submitted an individual CEP sales dataset.[8] Subsequently, the Department requested that Nan Ya and its three U.S. affiliates provide several revised sales datasets for home market, export price (EP) and CEP sales. While the correct datasets were used for the CEP sales for the *Final Results,* we erroneously used an older version of the home market and U.S. EP sales datasets submitted by Nan Ya. Thus, the Department has determined that the use of the wrong datasets constitutes a ministerial error, in accordance with section 751(h) of the Act, and 19 CFR 351.224(e). For these amended final results, we recalculated Nan Ya's antidumping duty margin using the correct sales datasets.

Regarding Nan Ya's second allegation with respect to model matching, the Department disagrees that it made a ministerial error as defined by section 751(h) of the Act and 19 CFR 351.224(e).

[1] *See Polyethylene Terephthalate Film, Sheet, and Strip From Taiwan: Final Results of Antidumping Duty Administrative Review,* 76 FR 9745 (February 22, 2011) (*Final Results*) and accompanying Issues and Decision Memorandum (IDM).

[2] *See* Nan Ya's Letter to the Secretary of Commerce dated March 8, 2011 (Allegation of Ministerial Errors).

[3] *See* Petitioners' Letter to the Secretary of Commerce dated March 14, 2011.

[4] *See also* 19 CFR 351.224(f).

[5] *See* Allegation of Ministerial Errors at 1–3.

[6] *See* Petitioners' Rebuttal Comments at 1–3.

[7] *See* the Department's Letter to Nan Ya dated May 27, 2010 at 1.

[8] *See, e.g.,* Letters to the Secretary of Commerce regarding the section C questionnaire responses of Forplax LLC and Forplax Los Angeles, Inc. dated July 7, 2010 at C–2, and Letter to the Secretary of Commerce regarding the section C questionnaire response of Rocheux International dated July 9, 2010 at C–1.

The model matching hierarchy methodology used for the *Final Results* consists of four criteria (in order of importance): Specification; thickness in microns; thickness code; and surface treatment.[9] The model matching hierarchy used by the Department does not fall under the "ministerial error" definition because it is a methodology that the Department applied correctly. It did not involve any incorrect copying, duplication or unintentional error of any type. This hierarchy methodology is consistent with the hierarchy as described in the Department's initial questionnaire to Nan Ya regarding this administrative review,[10] and used for the preliminary results. We note that Nan Ya did not comment on the model matching hierarchy in its case brief regarding the preliminary results. We also note that in the *Final Results,* based on the information placed on the record by the other respondent in this administrative review, Shinkong Synthetic Fibers Corporation and Shinkong Materials Technology Co., Ltd., we determined that there are little or no cost differences between surface treatments,[11] which is contradictory to Nan Ya's argument. As such, we find that, for the *Final Results,* the Department relied upon its intended model matching hierarchy and, thus, determine that the Department did not commit a ministerial error in accordance with section 751(h) of the Act, and 19 CFR 351.224(e).

Amended Final Results

Therefore, in accordance with section 751(h) of the Act and 19 CFR 351.224(e), we are amending the *Final Results* of this administrative review of the antidumping duty order on PET Film from Taiwan. The revised weighted-average dumping margin for Nan Ya as a result of these amended final results is as follows:

Manufacturer/Exporter	Original weighted-average margin (percent)	Amended weighted-average margin (percent)
Nan Ya Plastics Corporation, Ltd	20.76	18.30

Assessment Rates

Pursuant to section 751(a)(2)(A) of the Act, and 19 CFR 351.212(b), the Department shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. We will instruct CBP to liquidate entries of merchandise produced and/or exported by Nan Ya. For assessment purposes, where the respondent reports the entered value for their sales, we calculate importer-specific (or customer-specific) *ad valorem* assessment rates based on the ratio of the total amount of the dumping duties calculated for the examined sales to the total entered value of those same sales. *See* 19 CFR 351.212(b). However, where the respondent does not report the entered value for their sales, we calculate importer-specific (or customer-specific) per unit duty assessment rates. The Department intends to issue appropriate assessment instructions directly to CBP 15 days after the date of publication of these amended final results of review.

The Department clarified its "automatic assessment" regulation on May 6, 2003. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003). This clarification applies to entries of subject merchandise during the POR produced by the companies included in the final results of review for which the reviewed companies did not know their merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate non-reviewed entries at the all-others rate of 2.40 percent from the investigation if there is no rate for the intermediate company(ies) involved in the transaction. *See Notice of Amended Final Antidumping Duty Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) from Taiwan,* 67 FR 44174 (July 1, 2002), as corrected in 67 FR 46566 (July 15, 2002).

Cash Deposit Requirements

The following cash deposit requirements will be effective for any entries made on or after February 22, 2011, the date of publication of the *Final Results,* for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the *Final Results,* as provided by section 751(a)(2)(C) of the Act: (1) For Nan Ya, the cash deposit rate will be the amended weighted-average margin rate shown above in the "Amended Final Results" section of this notice; (2) for previously investigated or reviewed Taiwanese and non-Taiwanese exporters of subject merchandise not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all Taiwanese exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the Taiwan-wide rate of 2.40 percent; and (4) for all non-Taiwanese exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the Taiwanese exporters that supplied that non-Taiwanese exporter. These deposit requirements will remain in effect until further notice.

Disclosure

We will disclose the calculations performed for these amended final results within five days of the date of publication of this notice to interested parties in accordance with 19 CFR 351.224(b).

Notification of Interested Parties

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred, and in the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation that is subject to sanction.

These amended final results are published in accordance with sections 751(h) and 777(i)(1) of the Act.

Dated: March 29, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–7929 Filed 4–1–11; 8:45 am]

BILLING CODE 3510–DS–P

[9] *See, e.g.,* the Department's September 3, 2009 Initial Questionnaire to Nan Ya Plastics Corporation at B–9.

[10] *See id.*

[11] *See* IDM at Comment 1.

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–968]

Aluminum Extrusions From the People's Republic of China: Final Affirmative Countervailing Duty Determination

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce (the Department) determines that countervailable subsidies are being provided to producers and exporters of aluminum extrusions from the People's Republic of China (the PRC). For information on the estimated subsidy rates, see the "Suspension of Liquidation" section of this notice.

DATES: *Effective Date:* April 4, 2011.

FOR FURTHER INFORMATION CONTACT: John Conniff, AD/CVD Operations, Office 3, Import Administration, U.S. Department of Commerce, Room 4014, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1009.

SUPPLEMENTARY INFORMATION:

Background

This investigation covers 58 programs. The mandatory respondents in this investigation are: Liaoyang Zhongwang Aluminum Profile Co. Ltd./ Liaoning Zhongwang Group (collectively, the Zhongwang Group), Miland Luck Limited, Dragonluxe Limited, and the Government of the PRC. The voluntary respondents in this investigation are: Guang Ya Aluminum Industries Co., Ltd., Foshan Guangcheng Aluminum Co., Ltd., Guang Ya Aluminum Industries Hong Kong, Kong Ah International Company Limited, and Yongji Guanghai Aluminum Industry Co., Ltd. (collectively the Guang Ya Companies), and Zhaoqing New Zhongya Aluminum Co., Ltd., Zhongya Shaped Aluminum HK Holding Ltd., and Karlton Aluminum Company Ltd. (collectively the Zhongya Companies).

Period of Investigation

The period of investigation for which we are measuring subsidies is January 1, 2009, through December 31, 2009, which corresponds to the PRC's most recently completed fiscal year at the time we initiated this investigation. *See* 19 CFR 351.204(b)(2).

Case History

The following events have occurred since the Department published the *Preliminary Determination* on September 7, 2010. *See Aluminum Extrusions From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination,* 75 FR 54302 (September 7, 2010) (*Preliminary Determination*). From September 17, 2010, through November 2, 2010, the Department issued supplemental questionnaires to the Guang Ya Companies, the Zhongya Companies, and the GOC, which, in turn, submitted questionnaire responses from October 13, 2010, through November 12, 2010. On October 29, 2010, we issued a post-preliminary decision memorandum addressing new subsidy allegations submitted by petitioners on July 13 and July 28, 2010.[1] *See* Memorandum to Ronald K. Lorentzen, Deputy Assistant Secretary for Import Administration, "Post-Preliminary Decision Memorandum" (October 29, 2010), a public document on file in room 7046 of HCHB, the Central Records Unit (CRU). We conducted verification of the questionnaire responses submitted by the Guang Ya Companies, the Zhongya Companies, and the GOC from December 3 through December 17, 2010. We issued verification reports from January 20 through January 28, 2011. Interested parties submitted case briefs on February 9, 2011 and rebuttal briefs on February 15, 2011. We conducted a public hearing on March 3, 2011.

Scope Comments

Based on analysis of information and arguments, the Department has modified the scope of the antidumping and countervailing duty investigations. For a full discussion, see Comment 3, "Scope of the Antidumping and Countervailing Duty Investigations," of the Issues and Decision Memorandum that accompanies the final determination in the less-than-fair-value investigation of aluminum extrusions from the People's Republic of China.

Scope of Investigation

The merchandise covered by this investigation is aluminum extrusions which are shapes and forms, produced by an extrusion process, made from aluminum alloys having metallic elements corresponding to the alloy series designations published by The Aluminum Association commencing with the numbers 1, 3, and 6 (or proprietary equivalents or other certifying body equivalents). Specifically, the subject merchandise made from aluminum alloy with an Aluminum Association series designation commencing with the number 1 contains not less than 99 percent aluminum by weight. The subject merchandise made from aluminum alloy with an Aluminum Association series designation commencing with the number 3 contains manganese as the major alloying element, with manganese accounting for not more than 3.0 percent of total materials by weight. The subject merchandise is made from an aluminum alloy with an Aluminum Association series designation commencing with the number 6 contains magnesium and silicon as the major alloying elements, with magnesium accounting for at least 0.1 percent but not more than 2.0 percent of total materials by weight, and silicon accounting for at least 0.1 percent but not more than 3.0 percent of total materials by weight. The subject aluminum extrusions are properly identified by a four-digit alloy series without either a decimal point or leading letter. Illustrative examples from among the approximately 160 registered alloys that may characterize the subject merchandise are as follows: 1350, 3003, and 6060.

Aluminum extrusions are produced and imported in a wide variety of shapes and forms, including, but not limited to, hollow profiles, other solid profiles, pipes, tubes, bars, and rods. Aluminum extrusions that are drawn subsequent to extrusion ("drawn aluminum") are also included in the scope.

Aluminum extrusions are produced and imported with a variety of finishes (both coatings and surface treatments), and types of fabrication. The types of coatings and treatments applied to subject aluminum extrusions include, but are not limited to, extrusions that are mill finished (*i.e.,* without any coating or further finishing), brushed, buffed, polished, anodized (including bright-dip anodized), liquid painted, or powder coated. Aluminum extrusions may also be fabricated, *i.e.,* prepared for assembly. Such operations would include, but are not limited to, extrusions that are cut-to-length, machined, drilled, punched, notched, bent, stretched, knurled, swedged, mitered, chamfered, threaded, and spun. The subject merchandise includes

[1] Petitioners are the Aluminum Extrusion Fair Trade Committee: Aerolite Extrusion Company; Alexandria Extrusions Company; Beneda Aluminum of Florida, Inc.; William L. Bonnell Company, Inc.; Frontier Aluminum Corporation; Futura Industries Corporation; Hydro Aluminum North American Inc.; Kaiser Aluminum Corporation; Profile Extrusion Company; Sapa Extrusions, Inc.; Western Extrusions Corporation; and the United Steel, Paper, and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union.

aluminum extrusions that are finished (coated, painted, *etc.*), fabricated, or any combination thereof.

Subject aluminum extrusions may be described at the time of importation as parts for final finished products that are assembled after importation, including, but not limited to, window frames, door frames, solar panels, curtain walls, or furniture. Such parts that otherwise meet the definition of aluminum extrusions are included in the scope. The scope includes the aluminum extrusion components that are attached (*e.g.,* by welding or fasteners) to form subassemblies, *i.e.,* partially assembled merchandise unless imported as part of the finished goods 'kit' defined further below. The scope does not include the non-aluminum extrusion components of subassemblies or subject kits.

Subject extrusions may be identified with reference to their end use, such as fence posts, electrical conduits, heat sinks, door thresholds, or carpet trim. Such goods are subject merchandise if they otherwise meet the scope definition, regardless of whether they are ready for use at the time of importation.

The following aluminum extrusion products are excluded: Aluminum extrusions made from aluminum alloy with an Aluminum Association series designation commencing with the number 2 and containing in excess of 1.5 percent copper by weight; aluminum extrusions made from aluminum alloy with an Aluminum Association series designation commencing with the number 5 and containing in excess of 1.0 percent magnesium by weight; and aluminum extrusions made from aluminum alloy with an Aluminum Association series designation commencing with the number 7 and containing in excess of 2.0 percent zinc by weight.

The scope also excludes finished merchandise containing aluminum extrusions as parts that are fully and permanently assembled and completed at the time of entry, such as finished windows with glass, doors with glass or vinyl, picture frames with glass pane and backing material, and solar panels. The scope also excludes finished goods containing aluminum extrusions that are entered unassembled in a "finished goods kit." A finished goods kit is understood to mean a packaged combination of parts that contains, at the time of importation, all of the necessary parts to fully assemble a final finished good and requires no further finishing or fabrication, such as cutting or punching, and is assembled 'as is' into a finished product. An imported product will not be considered a 'finished goods kit' and therefore excluded from the scope of the investigation merely by including fasteners such as screws, bolts, *etc.* in the packaging with an aluminum extrusion product.

The scope also excludes aluminum alloy sheet or plates produced by other than the extrusion process, such as aluminum products produced by a method of casting. Cast aluminum products are properly identified by four digits with a decimal point between the third and fourth digit. A letter may also precede the four digits. The following Aluminum Association designations are representative of aluminum alloys for casting: 208.0, 295.0, 308.0, 355.0, C355.0, 356.0, A356.0, A357.0, 360.0, 366.0, 380.0, A380.0, 413.0, 443.0, 514.0, 518.1, and 712.0. The scope also excludes pure, unwrought aluminum in any form.

The scope also excludes collapsible tubular containers composed of metallic elements corresponding to alloy code 1080A as designated by the Aluminum Association where the tubular container (excluding the nozzle) meets each of the following dimensional characteristics: (1) Length of 37 mm or 62 mm, (2) outer diameter of 11.0 mm or 12.7 mm, and (3) wall thickness not exceeding 0.13 mm.

Imports of the subject merchandise are provided for under the following categories of the Harmonized Tariff Schedule of the United States ("HTS"): 7604.21.0000, 7604.29.1000, 7604.29.3010, 7604.29.3050, 7604.29.5030, 7604.29.5060, 7608.20.0030, and 7608.20.0090. The subject merchandise entered as parts of other aluminum products may be classifiable under the following additional Chapter 76 subheadings: 7610.10, 7610.90, 7615.19, 7615.20, and 7616.99 as well as under other HTS chapters. In addition, fin evaporator coils may be classifiable under HTS numbers: 8418.99.80.50 and 8418.99.80.60. While HTS subheadings are provided for convenience and customs purposes, the written description of the scope in this proceeding is dispositive.

Injury Test

Because the PRC is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Tariff Act of 1930, as amended (the Act), the International Trade Commission (the ITC) is required to determine whether imports of the subject merchandise from the PRC materially injure, or threaten material injury to, a U.S. industry. On June 17, 2010, the ITC published its preliminary determination finding that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports of aluminum extrusions from the PRC that are alleged to be sold in the United States at less than fair value and subsidized by the GOC. *See Certain Aluminum Extrusions from China,* 75 FR 34482 (June 17, 2010).

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this investigation are addressed in the Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Deputy Assistant Secretary for Import Administration, entitled "Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Aluminum Extrusions from the People's Republic of China," (March 28, 2011) (Decision Memorandum), which is hereby adopted by this notice. Attached to this notice as an Appendix is a list of the issues that parties raised and to which we have responded in the Decision Memorandum. Parties can find a complete discussion of all issues raised in this investigation and the corresponding recommendations in this public memorandum, which is on file in the Department's CRU. In addition, a complete version of the Decision Memorandum can be accessed directly on the Internet at *http://trade.gov/ia.* The paper copy and electronic version of the Decision Memorandum are identical in content.

Suspension of Liquidation

In accordance with section 705(c)(1)(B)(i) of the Act, we determine the total estimated net countervailable subsidy rates to be:

Company	*Ad Valorem* net subsidy rate
Guang Ya Aluminum Industries Co., Ltd., Foshan Guangcheng Aluminum Co., Ltd., Guang Ya Aluminum Industries Hong Kong, Kong Ah International Company Limited, and Yongji Guanghai Aluminum Industry Co., Ltd. (collectively the Guang Ya Companies).	9.94 percent *ad valorem*

Company	*Ad Valorem* net subsidy rate
Zhaoqing New Zhongya Aluminum Co., Ltd., Zhongya Shaped Aluminum HK Holding Ltd., and Karlton Aluminum Company Ltd. (collectively the Zhongya Companies).	8.02 percent *ad valorem*
Dragonluxe Limited	374.15 percent *ad valorem*
Miland Luck Limited	374.15 percent *ad valorem*
Liaoyang Zhongwang Aluminum Profile Co. Ltd./Liaoning Zhongwang Group (collectively, the Zhongwang Group)	374.15 percent *ad valorem*
All Others Rate	374.15 percent *ad valorem*

We note that section 705(c)(5)(A)(i) of the Act states that for companies not investigated, we will determine an all-others rate equal to be the weighted average countervailable subsidy rates established for exporters and producers individually investigated, excluding any zero and *de minimis* countervailable subsidy rates, and any rates determined entirely under section 776 of the Act. However, as discussed in Comment 9 of the Decision Memorandum, the companies that participated in the investigation are voluntary respondents. The Department's regulations state that in calculating the all-others rate under section 705(c)(5) of the Act, the Department will exclude net subsidy rates calculated for voluntary respondents. *See* 19 CFR 351.204(d)(3). *See also Antidumping Duties; Countervailing Duties,* 62 FR 27296, 27310 (May 19, 1997).

Therefore, we have resorted to "any reasonable method" to derive the all-others rate, as described under section 705(c)(5)(A)(ii) of the Act. We determine that equating the all-others rate with the total adverse facts available (AFA) rate applied to the non-cooperating, mandatory respondents constitutes a "reasonable method" under 705(c)(5)(A)(ii) of the Act. *See, e.g., Certain Potassium Phosphate Salts From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Termination of Critical Circumstances Inquiry,* 75 FR 30375 (June 1, 2010) (in an investigation where all of the mandatory respondents received a rate based on AFA, the Department used the AFA rate assigned to the mandatory respondents as the all-others rate).

As a result of our *Preliminary Determination* and pursuant to section 703(d) of the Act, we instructed U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of subject merchandise from the PRC which were entered or withdrawn from warehouse, for consumption on or after September 7, 2010, the date of the publication of the *Preliminary Determination* in the **Federal Register.** In accordance with section 703(d) of the Act, we later issued instructions to CBP to discontinue the suspension of liquidation for countervailing duty (CVD) purposes for subject merchandise entered, or withdrawn from warehouse, on or after January 6, 2011, but to continue the suspension of liquidation of all entries from September 7, 2010, through January 5, 2011.

We will issue a CVD order and reinstate the suspension of liquidation under section 706(a) of the Act if the ITC issues a final affirmative injury determination, and will require a cash deposit of estimated CVDs for such entries of merchandise in the amounts indicated above. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order (APO), without the written consent of the Assistant Secretary for Import Administration.

Return or Destruction of Proprietary Information

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to an APO of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This determination is published pursuant to sections 705(d) and 777(i) of the Act.

Dated: March 28, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

Appendix

List of Comments and Issues in the Decision Memorandum

Comment 1: Application of CVD Law to the PRC
Comment 2: Whether Application of the CVD Law to Imports from the PRC Violates the Administrative Procedure Act (APA)
Comment 3: Double Counting
Comment 4: Cut-off Date for Identifying Subsidies
Comment 5: Whether the Guang Ya Companies Inaccurately Reported Their Affiliates Thereby Warranting the Application of Adverse Facts Available (AFA)
Comment 6: Whether the Zhongya Companies Failed to Report Their Affiliates Thereby Warranting the Application of AFA
Comment 7: Whether the AFA Calculation is Accurate and Reasonable
Comment 8: Whether to Include Newly Alleged and Self-Reported Programs in the AFA Calculation
Comment 9: Whether the All Others Rate Should Equal the Total AFA Rate
Comment 10: Whether the Department Should Have Collected Information from Firms Subject to the All Others Rate
Comment 11: Whether the Department Should Have Selected Additional Mandatory Respondents
Comment 12: Whether the Department Should Retroactively Revise the All Others Rate from the *Preliminary Determination*
Comment 13: Whether the Sale of Aluminum Extrusions for More Than Adequate Remuneration (MTAR) Program Was Used by the Voluntary Respondents
Comment 14: Whether the Sale of Aluminum Extrusions for MTAR Program Is Specific
Comment 15: Whether the Sale of Aluminum Extrusions for MTAR Program Confers a Benefit
Comment 16: Whether the Department Improperly Rejected Data From The Zhongya Companies Pertaining to the Sale of Aluminum Extrusions For MTAR Program
Comment 17: Whether the Ownership Information of Respondents' Customers Was Complete and Fully Verified
Comment 18: Whether a Financial Contribution Exists Under the Provision of Primary Aluminum for Less Than Adequate Remuneration (LTAR) Program
Comment 19: Whether the Provision of Primary Aluminum for LTAR Program is Specific

[FR Doc. 2011–7926 Filed 4–1–11; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–967]

Aluminum Extrusions From the People's Republic of China: Final Determination of Sales at Less Than Fair Value

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* April 4, 2011.

SUMMARY: On November 12, 2010, the Department of Commerce ("Department") published its preliminary determination of sales at less than fair value ("LTFV") in the antidumping investigation of aluminum extrusions from the People's Republic of China ("PRC").[1] We invited interested parties to comment on our preliminary determination. Based on our analysis of the comments we received, we have made changes to our margin calculations for the mandatory respondents. The final dumping margins for this investigation are listed in the "Final Determination Margins" section below.

FOR FURTHER INFORMATION CONTACT: Paul Stolz or Lori Apodaca, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4474 or (202) 482–4551, respectively.

SUPPLEMENTARY INFORMATION:

Case History

The Department published its *Preliminary Determination* on November 12, 2010. The Department subsequently issued a ministerial error memorandum, in which it agreed to correct several ministerial errors.[2] On January 4, 2011, pursuant to the correction of ministerial errors, the Department published an *Amended Preliminary Determination*.[3]

Between December 6, 2010, and December 21, 2010, the Department conducted verifications of Guang Ya Aluminium Industries Co., Ltd. ("Guang Ya"), Foshan Guangcheng Aluminium Co., Ltd. ("Guangcheng"), Kong Ah International Co., Ltd.("Kong Ah"), and Guang Ya Aluminium Industries (Hong Kong) Ltd. ("Guang Ya HK") (collectively the "Guang Ya Group"); Zhaoqing New Zhongya Aluminum Co., Ltd. ("ZNZ"), Zhongya Shaped Aluminium (HK) Holding Limited ("Shaped Aluminum") and Karlton Aluminum Company Ltd. ("Karlton") (collectively "New Zhongya"); and Xinya Aluminum & Stainless Steel Product Co., Ltd. ("Xinya") (all parties, collectively "the Guang Ya Group/New Zhongya/Xinya"). The Department released verification reports for each of these companies on January 28, 2011.[4] *See* the "Verification" section below for additional information. On December 12, 2010, Aavid Thermalloy, Inc. ("Aavid") submitted a request for a scope hearing. On December 13, 2010, The Aluminum Extrusions Fair Trade Committee,[5] and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (collectively, "Petitioners") and New Zhongya submitted requests for a public hearing. On February 9, 2011, Petitioners submitted a request for a closed session of the hearing. On March 2, 2011, the Department held a public scope hearing for the antidumping duty and countervailing duty investigations, and both an open and a closed session of the antidumping duty hearing.

New Zhongya and Petitioners submitted surrogate value comments on December 22, 2010. On February 9, 2011, case briefs were filed by the Guang Ya Group, the Government of China ("GOC"), Petitioners, and New Zhongya. On February 14, 2011, the Guang Ya Group, New Zhongya, and Petitioners filed their rebuttal briefs.

Period of Investigation

The period of investigation ("POI") is July 1, 2009, through December 31, 2009. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition, which was March 2009. *See* 19 CFR 351.204(b)(1).

Verification

As provided in section 782(i) of the Tariff Act of 1930, as amended ("Act"), we conducted verification of the information submitted by the Guang Ya Group/New Zhongya/Xinya for use in our final determination.[6] We used standard verification procedures, including the examination of relevant accounting and production records, as appropriate, as well as original source documents provided by respondents.

[1] *See Aluminum Extrusions from the People's Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value, and Preliminary Determination of Targeted Dumping, 75 FR 69403 (November 12, 2010) ("Preliminary Determination").*

[2] *See* Memorandum entitled "Ministerial Error Memorandum, Aluminum Extrusions from the People's Republic of China, Preliminary Determination of Sales at Less Than Fair Value," dated December 21, 2010, on file in the Department's Central Records Unit ("CRU"), Room 7046 of the main Department building.

[3] *See Aluminum Extrusions From the People's Republic of China: Notice of Amended Preliminary Determination of Sales at Less Than Fair Value,* 76 FR 323 (January 4, 2011) ("*Amended Preliminary Determination*").

[4] *See* the Department's verification reports on the record of this investigation, all on file in the CRU.

[5] The Aluminum Extrusions fair Trade Committee is comprised of Aerolite Extrusion Company, Alexandria Extrusion Company, Benada Aluminum of Florida, Inc., William L. Bonnell Company, Inc., Frontier Aluminum Corporation, Futura Industries Corporation, Hydro Aluminum North America, Inc., Kaiser Aluminum Corporation, Profile Extrusions Company, Sapa Extrusions, Inc., and Western Extrusions Corporation.

[6] *See* the Department's verification reports on the record of this investigation in the CRU, with respect to these entities.

However, as detailed in our verification report and discussed further below, we were unable verify the information submitted by Xinya.

Analysis of Comments Received

The issues raised in the case and rebuttal briefs submitted in this investigation are addressed in the "Issues and Decision Memorandum for the Final Determination in the Less-Than-Fair-Value Investigation of Aluminum Extrusions from the People's Republic of China," ("Issues and Decision Memorandum") dated concurrently with this notice, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded in the Issues and Decision Memorandum is attached to this notice as Appendix I. The Issues and Decision Memorandum is a public document on file in the CRU and is accessible on the Web at *http://ia.ita.doc.gov/frn.* The paper copy and electronic version of the memorandum are identical in content.

Changes Since the Preliminary Determination

- We are amending the language of the scope of the antidumping duty ("AD") and countervailing duty ("CVD") investigations for clarification purposes as described in detail in the accompanying Issues and Decision Memorandum. *See* Comment 3, A–J in the accompanying Issues and Decision Memorandum.
- For the final determination, the Department has adjusted the Petition rates using the revised surrogate value for labor as described in detail in the accompanying Issues and Decision Memorandum. The revised petition margins range from 32.53 percent to 33.28 percent. *See* Comment 1, A–F, Labor Wage Rate in the accompanying Issues and Decision Memorandum; *see also* March 28, 2011 Memorandum to the File, regarding Investigation of Certain Aluminum Extrusions from the People's Republic of China: Petition Rate Recalculation ("Petition Rate Recalculation Memo").
- For the final determination, we are applying a rate based on adverse facts available ("AFA") to the Guang Ya Group/New Zhongya/Xinya single entity. As AFA we have assigned the highest rate from the petition of 33.18 percent, as recalculated for the final determination.[7] *See* Issues and Decision Memorandum at Comment 5: Application of Total AFA; *see also* Memorandum regarding: Application of Total Adverse Facts Available for the Guang Ya Group/New Zhongya/Xinya in the Antidumping Duty Investigation of Aluminum Extrusions from the People's Republic of China, dated March 28, 2011 ("Guang Ya Group/New Zhongya/Xinya AFA Memo").
- For the final determination, we have assigned the 29 separate rate applicants to whom we are granting a separate rate a dumping margin of 32.79 percent, based on the simple average of the margins alleged in the petition, as recalculated for this final determination. *See* Comment 1, A–F, Labor Wage Rate in the accompanying Issues and Decision Memorandum; *see also* Petition Rate Recalculation Memo, detailing recalculation to correct for a ministerial error.

Scope of the Investigations

The merchandise covered by this investigation is aluminum extrusions which are shapes and forms, produced by an extrusion process, made from aluminum alloys having metallic elements corresponding to the alloy series designations published by The Aluminum Association commencing with the numbers 1, 3, and 6 (or proprietary equivalents or other certifying body equivalents). Specifically, the subject merchandise made from aluminum alloy with an Aluminum Association series designation commencing with the number 1 contains not less than 99 percent aluminum by weight. The subject merchandise made from aluminum alloy with an Aluminum Association series designation commencing with the number 3 contains manganese as the major alloying element, with manganese accounting for not more than 3.0 percent of total materials by weight. The subject merchandise is made from an aluminum alloy with an Aluminum Association series designation commencing with the number 6 contains magnesium and silicon as the major alloying elements, with magnesium accounting for at least 0.1 percent but not more than 2.0 percent of total materials by weight, and silicon accounting for at least 0.1 percent but not more than 3.0 percent of total materials by weight. The subject aluminum extrusions are properly identified by a four-digit alloy series without either a decimal point or leading letter. Illustrative examples from among the approximately 160 registered alloys that may characterize the subject merchandise are as follows: 1350, 3003, and 6060.

Aluminum extrusions are produced and imported in a wide variety of shapes and forms, including, but not limited to, hollow profiles, other solid profiles, pipes, tubes, bars, and rods. Aluminum extrusions that are drawn subsequent to extrusion ("drawn aluminum") are also included in the scope.

Aluminum extrusions are produced and imported with a variety of finishes (both coatings and surface treatments), and types of fabrication. The types of coatings and treatments applied to subject aluminum extrusions include, but are not limited to, extrusions that are mill finished (*i.e.,* without any coating or further finishing), brushed, buffed, polished, anodized (including bright-dip anodized), liquid painted, or powder coated. Aluminum extrusions may also be fabricated, *i.e.,* prepared for assembly. Such operations would include, but are not limited to, extrusions that are cut-to-length, machined, drilled, punched, notched, bent, stretched, knurled, swedged, mitered, chamfered, threaded, and spun. The subject merchandise includes aluminum extrusions that are finished (coated, painted, etc.), fabricated, or any combination thereof.

Subject aluminum extrusions may be described at the time of importation as parts for final finished products that are assembled after importation, including, but not limited to, window frames, door frames, solar panels, curtain walls, or furniture. Such parts that otherwise meet the definition of aluminum extrusions are included in the scope. The scope includes the aluminum extrusion components that are attached (*e.g.,* by welding or fasteners) to form subassemblies, *i.e.,* partially assembled merchandise unless imported as part of the finished goods 'kit' defined further below. The scope does not include the non-aluminum extrusion components of subassemblies or subject kits.

Subject extrusions may be identified with reference to their end use, such as fence posts, electrical conduits, heat sinks, door thresholds, or carpet trim. Such goods are subject merchandise if they otherwise meet the scope definition, regardless of whether they are ready for use at the time of importation.

The following aluminum extrusion products are excluded: Aluminum extrusions made from aluminum alloy with an Aluminum Association series designations commencing with the number 2 and containing in excess of 1.5 percent copper by weight; aluminum extrusions made from aluminum alloy with an Aluminum Association series designation commencing with the number 5 and containing in excess of 1.0 percent magnesium by weight; and aluminum extrusions made from

[7] *See* Petition Rate Recalculation Memo.

aluminum alloy with an Aluminum Association series designation commencing with the number 7 and containing in excess of 2.0 percent zinc by weight.

The scope also excludes finished merchandise containing aluminum extrusions as parts that are fully and permanently assembled and completed at the time of entry, such as finished windows with glass, doors with glass or vinyl, picture frames with glass pane and backing material, and solar panels. The scope also excludes finished goods containing aluminum extrusions that are entered unassembled in a "finished goods kit." A finished goods kit is understood to mean a packaged combination of parts that contains, at the time of importation, all of the necessary parts to fully assemble a final finished good and requires no further finishing or fabrication, such as cutting or punching, and is assembled 'as is' into a finished product. An imported product will not be considered a 'finished goods kit' and therefore excluded from the scope of the investigation merely by including fasteners such as screws, bolts, *etc.* in the packaging with an aluminum extrusion product.

The scope also excludes aluminum alloy sheet or plates produced by other than the extrusion process, such as aluminum products produced by a method of casting. Cast aluminum products are properly identified by four digits with a decimal point between the third and fourth digit. A letter may also precede the four digits. The following Aluminum Association designations are representative of aluminum alloys for casting: 208.0, 295.0, 308.0, 355.0, C355.0, 356.0, A356.0, A357.0, 360.0, 366.0, 380.0, A380.0, 413.0, 443.0, 514.0, 518.1, and 712.0. The scope also excludes pure, unwrought aluminum in any form.

The scope also excludes collapsible tubular containers composed of metallic elements corresponding to alloy code 1080A as designated by the Aluminum Association where the tubular container (excluding the nozzle) meets each of the following dimensional characteristics: (1) Length of 37 mm or 62 mm, (2) outer diameter of 11.0 mm or 12.7 mm, and (3) wall thickness not exceeding 0.13 mm.

Imports of the subject merchandise are provided for under the following categories of the Harmonized Tariff Schedule of the United States ("HTS"): 7604.21.0000, 7604.29.1000, 7604.29.3010, 7604.29.3050, 7604.29.5030, 7604.29.5060, 7608.20.0030, and 7608.20.0090. The subject merchandise entered as parts of other aluminum products may be classifiable under the following additional Chapter 76 subheadings: 7610.10, 7610.90, 7615.19, 7615.20, and 7616.99 as well as under other HTS chapters. In addition, fin evaporator coils may be classifiable under HTS numbers: 8418.99.80.50 and 8418.99.80.60. While HTS subheadings are provided for convenience and customs purposes, the written description of the scope in this proceeding is dispositive.

Scope Comments

Concurrent with the *Preliminary Determination,* on October 27, 2010, the Department issued a decision memorandum addressing ten scope issues in this and the concurrent countervailing duty investigation on aluminum extrusions from the PRC.[8]

As stated in the *Preliminary Determination,* scope comments received on or after October 7, 2010, but prior to the *Preliminary Determination* were not submitted in time for consideration for the *Preliminary Determination* and that, as a result, we would fully consider any such comments for the final determination. In addition, it came to our attention that our Preliminary Scope Memorandum inadvertently did not address scope comments submitted by Petitioners on May 10, 2010. We provided interested parties an opportunity to comment on the Preliminary Scope Memorandum. In response, multiple parties submitted scope case briefs on January 20, 2011, and scope rebuttal briefs on January 25, 2011.

For the final determination, we have considered Petitioners' May 10, 2010, scope comments, the scope comments provided by all parties on or after October 7, 2011, but prior to the *Preliminary Determination,* and the scope case and rebuttal briefs submitted on January 20 and January 25, 2011, respectively, and addressed these issues in the Issues and Decision Memorandum.[9]

On May 10, 2010, and in its scope case brief of January 11, 2011, Petitioners provided a series of proposed wording changes to clarify the scope language of these investigations. No other party provided comments on these proposed changes. On February 28, 2011, the Department requested that Petitioners clarify whether the Petition intended to cover the non-aluminum components of subject kits and subassemblies and that Petitioners provide language if the intent of the Petition was to not cover the non-aluminum components. On March 9, 2011, Petitioners submitted clarifying language stipulating that it is the intent of the petition to cover only the aluminum extrusion components of entries of subject aluminum extrusion subassemblies or subject kits.

We have adopted all of Petitioners' clarifications for the final determination. For a complete discussion of the parties' scope-related comments (including the clarifications discussed above) and the Department's position, *see* the Issues and Decision Memorandum accompanying this notice at Comment 3, A–J.

Targeted Dumping

Because we are basing the margin of the sole mandatory respondent on total AFA for the final determination, we have not considered Petitioners' targeted dumping allegation for the final determination.

Surrogate Country

In the *Preliminary Determination,* we stated that we had selected India as the appropriate surrogate country to use in this investigation for the following reasons: (1) It is a significant producer of comparable merchandise; (2) it is at a level of economic development comparable to that of the PRC, pursuant to section 773(c)(4) of the Act; and (3) we have reliable data from India that we can use to value the FOPs. *See Preliminary Determination.* For the final determination, we received no comments on surrogate country selection and, accordingly, made no changes to our findings with respect to the selection of a surrogate country.

Affiliation

For the reasons set forth in our *Preliminary Determination,* we continue to find the entities comprising the Guang Ya Group, and the entities

[8] *See* October 27, 2010, Memorandum entitled "Preliminary Determinations: Comments on the Scope of the Investigations" ("Preliminary Scope Memorandum"); *see also Preliminary Determination.*

[9] Specifically: Floturn, Inc. ("Floturn") submitted comments on October 7, 2010; Petitioners on October 13, 2010, October 19, 2010, and October 22, 2010; the Shower Door, Tub and Shower Enclosures Manufacturers' Alliance ("SDMA") on October 7, 2010; Eagle Metals, Inc. and Eagle Metals Distributors, Inc. (collectively, "Eagle Metals") on October 12, 2010, October 13, 2010, and October 21, 2010; Aavid Thermalloy ("Aavid") on October 13, 2010, and October 21, 2010; Brazeway Inc. ("Brazeway") on October 19, 2010, and December 15, 2010; Maine Ornamental, LLC ("Maine Ornamental") on October 22, 2010; and Hubble Power Systems ("HPS") on October 26, 2010. Additionally, Petitioners, Floturn, SDMA, Eagle Metals, Aavid, Brazeway, and Maine Ornamental submitted scope case briefs on January 20, 2011; Petitioners, Floturn, SDMA, and Brazeway submitted scope rebuttal briefs on January 25, 2011.

comprising New Zhongya, affiliated pursuant to section 771(33)(A) of the Act, as each entity is owned by a member of the Kuang family. Further, we find that New Zhongya is affiliated with one of its reported customers during the POI pursuant to section 771(33)(F) of the Act.[10] Furthermore, we continue to find the Guang Ya Group/ New Zhongya and Xinya affiliated pursuant to section 771(33)(A) of the Act.

In making this determination, we note that the Guang Ya Group and New Zhongya each stated on the record that a Kuang sibling was "Shareholder" of Xinya, and though the Guang Ya Group also made other inconsistent statements regarding ownership of Xinya, neither party has recanted these original statements. Further, because the ownership information provided by Xinya could not be verified, we do not accord any weight to its ownership claims, which constitute unverifiable information. Thus, we continue to find that the record evidence indicates that Xinya is owned by a member of the Kuang family. Because each entity is owned by a member of the Kuang family, we conclude that the owners of Guang Ya Group, New Zhongya, and Xinya are members of a family grouping, pursuant to section 771(33)(A) of the Act. Further, we find that the ownership by the family grouping satisfies the requirement of affiliation pursuant to section 771(33)(F) of the Act, because all of the companies within the Guang Ya Group, New Zhongya, and Xinya are under the common control of the family grouping.

To the extent that section 771(33) of the Act does not conflict with the Department's application of separate rates and enforcement of the non-market economy ("NME") provision or section 773(c) of the Act, the Department will determine that affiliated exporters and/ or producers are a single entity if the facts of the case support such a finding.[11] The Court of International Trade ("CIT") has upheld the Department's practice of determining whether to treat two or more companies as a single entity for antidumping purposes based on a consideration of whether there exists a significant potential for manipulation of prices and/or export decisions.[12] The determination to treat the Guang Ya Group, New Zhongya, and Xinya as a single entity, is based on a finding that the family grouping holds essentially full ownership of the Guang Ya Group, New Zhongya, and Xinya, all of which are producers and/or exporters of merchandise under consideration in this investigation. Therefore, in considering the level of common ownership pursuant to 19 CFR 351.401(f)(2)(i), we find nearly 100 percent common ownership of the Guang Ya Group, New Zhongya, and Xinya by the family grouping. In this context, the family in question is the "person" jointly owning and controlling the Guang Ya Group, New Zhongya, and Xinya.

Regarding 19 CFR 351.401(f)(2)(ii), the extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm, the record of this proceeding shows that Kuang family members sit on the boards of, and have management positions at, the Guang Ya Group, and New Zhongya, as described above. With respect to the third criterion for finding significant potential for manipulation, 19 CFR 351.401(f)(2)(iii), the presence of intertwined operations, information on the record indicates significant financial transactions between Xinya and the owner of New Zhongya, which are recorded as part of New Zhongya's accounting records.[13] Accordingly, we find that the relationship between the Guang Ya Group, New Zhongya, and Xinya poses a significant potential for the manipulation of price or production pursuant to 19 CFR 351.401(f)(2).

Thus, by virtue of the common ownership of the three entities, family members on the boards of at least two of the companies, evidence of financial transactions between two of these entities, and the fact that all entities produce and/or export merchandise under consideration, we find that there exists the significant potential for manipulation such that the Guang Ya Group, New Zhongya and Xinya should be treated as a single entity.[14]

Separate Rates

In proceedings involving NME countries, the Department begins with a rebuttable presumption that all exporters within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to an investigation involving an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent to be entitled to a separate rate.[15]

In the *Preliminary Determination,* we found that the mandatory respondent (*i.e.,* the Guang Ya Group/New Zhongya) [16] and 29 separate-rate applicants demonstrated their eligibility for separate-rate status. Specifically, both Guang Ya Group and New Zhongya provided, and the Department successfully verified, the requisite information to demonstrate an absence of both *de jure* and *de facto* government control over their respective export activities. For the final determination, we continue to find that the Guang Ya Group/New Zhongya single entity is eligible for a separate rate.

Further, because no parties commented on the separate-rate status of the other separate-rate applicants and no information has come to light that would alter our preliminary findings, we continue to find that the evidence placed on the record of this investigation by the 29 separate-rate applicants to whom we preliminarily granted separate rate status demonstrates both a *de jure* and *de facto* absence of government control, with respect to their respective exports of the merchandise under investigation; thus they are eligible for separate-rate status. *See Preliminary Determination.*

In the *Preliminary Determination,* we denied separate rate status to one

[10] *See* March 28, 2011, Memorandum regarding the Investigation of Aluminum Extrusions from the People's Republic of China: Final Determination Regarding Affiliation and Collapsing of Guang Ya Aluminium Industries Co., Ltd., Foshan Guangcheng Aluminium Co., Ltd., Kong Ah International Co., Ltd., and Guang Ya Aluminium Industries (Hong Kong) Ltd.; Zhaoqing New Zhongya Aluminum Co., Ltd., Zhongya Shaped Aluminium (HK) Holding Ltd., Karlton Aluminum Co., Ltd.; and Xinya Aluminum & Stainless Steel Product Co., Ltd. ("Final Affiliation/Collapsing Memo").

[11] *See Certain Preserved Mushrooms From the People's Republic of China: Preliminary Results of Sixth New Shipper Review and Preliminary Results and Partial Rescission of Fourth Antidumping Duty Administrative Review,* 69 FR 10410, 10413 (March 5, 2004) ("*Mushrooms*"), unchanged in *Final Results and Final Rescission, in Part, of Antidumping Duty Administrative Review: Certain Preserved Mushrooms From the People's Republic of China,* 70 FR 54361 (September 14, 2005).

[12] *See Hontex Enterprises* v. *United States,* 342 F. Supp. 2d 1225, 1230–34 (CIT 2004) ("*Hontex II*").

[13] *See* January 28, 2010, Memorandum regarding the Verification of the Sales and Factors Responses of Zhaoqing New Zhongya Aluminum Co., Ltd. ("ZNZ"), Zhongya Shaped Aluminium (HK) Holding Limited ("Shaped Aluminum") and Karlton Aluminum Company Ltd. ("Karlton") (collectively "New Zhongya") in the Less-Than-Fair Value Investigation of Aluminum Extrusions from the People's Republic of China ("New Zhongya Verification Report"), at 10.

[14] *Stainless Steel Bar from India: Final Results of Antidumping Duty Administrative Review,* 74 FR 47198 (September 15, 2009), and accompanying Issues and Decision Memorandum at Comment 1.

[15] *See Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991) ("Sparklers"), as amplified by Notice *of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994) ("*Silicon Carbide*"), and 19 CFR 351.107(d).

[16] Because there is no record information to indicate that Xinya, which is part of this collapsed entity, is an exporter to the United States, Xinya is not eligible for consideration of a separate rate.

separate rate applicant, Shanghai Canghai Aluminum Tube Packing Co. ("Shanghai Canghai"), but stated that we would provide it with an additional opportunity to correct deficiencies submitted in its original separate rate application ("SRA") and September 8, 2010, Supplemental Questionnaire Response ("SQR") to the Department's supplemental questionnaire.[17] On November 27, 2010, the Department sent another letter to Shanghai Canghai rejecting its September 8, 2010, SQR because of procedural deficiencies and because it contained insufficient documentation to analyze Shanghai Canghai's eligibility for a separate rate, including incomplete narrative responses to the questions asked and no translations. In this letter, however, we also provided Shanghai Canghai an opportunity to re-submit its response to correct these deficiencies.[18] On or about December 9, 2010, the Department received Shanghai Canghai's response to the Department's November 27, 2010, letter. However, the December 9, 2010, SQR was not filed in conformance with the Department's regulations regarding filing, service, or certification of documents (*see* 19 CFR 351.303). Further, Shanghai Canghai's December 9, 2010, SQR again provided no narrative responses to any of the Department's questions from the separate-rate application. As a result, on March 17, 2011, the Department sent a letter to Shanghai Canghai rejecting its December 9, 2010, response. Because Shanghai Canghai has failed to respond adequately to the Department's request for separate rate information despite being given several opportunities to do so, the Department has not considered Shanghai Canghai's submission for the final determination nor retained it for the record. Thus, for this final determination, we are not granting Shanghai Canghai a separate rate, and it is part of the PRC-wide entity.

Margin for the Separate Rate Companies

Since we assigned the individually examined respondent a dumping margin based on total AFA, we do not have any mandatory respondents in this investigation whose dumping margin is not based on AFA. Thus, we have assigned the 29 separate rate applicants to whom we are granting a separate rate a dumping margin based on the simple average of the margins alleged in the petition, as recalculated for the final determination.

Use of Facts Available

Section 776(a)(2) of the Act, provides that, if an interested party: (A) Withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested by the Department, subject to sections 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Section 782(c)(1) of the Act provides that if an interested party "promptly after receiving a request from {the Department} for information, notifies {the Department} that such party is unable to submit the information requested in the requested form and manner, together with a full explanation and suggested alternative forms in which such party is able to submit the information," the Department may modify the requirements to avoid imposing an unreasonable burden on that party.

Section 782(d) of the Act provides that, if the Department determines that a response to a request for information does not comply with the request, the Department will inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person the opportunity to remedy or explain the deficiency. If that person submits further information that continues to be unsatisfactory, or this information is not submitted within the applicable time limits, the Department may, subject to section 782(e), disregard all or part of the original and subsequent responses, as appropriate.

Section 782(e) of the Act states that the Department shall not decline to consider information deemed "deficient" under section 782(d) if: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

Furthermore, section 776(b) of the Act states that if the Department "finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information from the {Department}, the {Department}, in reaching the applicable determination under this title, may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available."[19]

For this final determination, in accordance with sections 773(c)(3)(A) and (B) of the Act and sections 776(a)(2)(A), (B), (C), and (D) and 776(b) of the Act, we have determined that the use of AFA is warranted for the Guang Ya Group/New Zhongya/Xinya, and the PRC-wide entity as discussed below.

Guang Ya Group/New Zhongya/Xinya

The Department has determined that the information to construct an accurate and otherwise reliable margin is not available on the record with respect to the Guang Ya Group/New Zhongya/Xinya. The Department reached this determination because the Guang Ya Group/New Zhongya/Xinya withheld information that had been requested, failed to provide such information in a timely manner or in the form or manner requested, significantly impeded this proceeding, and provided information that could not be verified, pursuant to sections 776(a)(1) and (2)(A), (B), (C) and (D) of the of Act.[20] Specifically, Guang Ya Group's narrative questionnaire responses did not comport with the data sections of those same responses; moreover, the factors of production data submitted by Guang Ya Group post-verification did not reflect the data verified by the Department at Guang Ya Group's facilities. New Zhongya mis-reported a portion of its U.S. sales indicating that they were constructed export price sales to the first unaffiliated party in the United States when in fact they were the transfer price sales to its U.S. affiliated party. Finally, Xinya provided no documentation at verification to demonstrate its claimed ownership. For additional detail, *see* Guang Ya Group/New Zhongya/Xinya AFA Memo. As a result, the Department has determined to apply the facts otherwise available. Further, because the Department finds that the Guang Ya Group/New Zhongya/

[17] *See Preliminary Determination,* the Department's June 25, 2010, letter to Shanghai Canghai granting the company's request to extend the deadline for its SRA submission to July 2, 2010, and the Department's August 18, 2010, letter to Shanghai Canghai regarding Antidumping Duty Investigation of Aluminum Extrusions from the People's Republic of China: Supplemental Questionnaire—Separate Rate Application.

[18] *See* the Department's November 27, 2010, letter to Shanghai Canghai regarding re-filing its Separate Rate Supplemental Questionnaire.

[19] *See also Statement of Administrative Action ("SAA") accompanying the Uruguay Round Agreements Act (URAA),* H.R. Rep. No. 103–316, Vol. 1 at 870 (1994).

[20] *See* Guang Ya Group/New Zhongya/Xinya AFA Memo.

Xinya failed to cooperate to the best of its ability, pursuant to section 776(b) of the Act, the Department has determined to use an adverse inference when applying facts available for the final determination in this investigation.[21]

The PRC-Wide Entity

Because we begin with the presumption that all companies within an NME country are subject to government control, and because only the companies listed under the "Final Determination Margins" section, below, have overcome that presumption, we are applying a single antidumping rate (*i.e.,* the PRC-wide rate) to all other exporters of subject merchandise from the PRC because these other companies did not demonstrate entitlement to a separate rate.[22] The PRC-wide rate applies to all entries of subject merchandise except for entries from the companies eligible for separate rate status.

In the *Preliminary Determination,* the Department found that there were producers/exporters of the subject merchandise during the POI from the PRC that did not respond to the Department's request for information. Further, we treated these PRC producers/exporters as part of the PRC-wide entity because they did not demonstrate their eligibility for a separate rate. Additionally, as a result of the PRC-wide entity's failure to respond to our requests for information we further determined that, pursuant to section 776(a)(2)(A) of the Act, the PRC-wide entity failed to cooperate by not acting to the best of its ability to comply with requests for information. *See id.* Accordingly, we also determined that in selecting from among the facts available an adverse inference was warranted because of the PRC-wide entity's failure to cooperate to the best of its ability. As AFA, we preliminarily assigned to the PRC-wide entity a recalculated rate of 33.18 percent, the highest calculated rate from the petition, as recalculated for the *Amended Preliminary Determination.*[23] *See Statement of Administrative Action accompanying the URAA,* H.R. Rep. No. 103–316, vol. 1, at 870 (1994) ("SAA").

Because the PRC-wide entity did not respond to our requests for information, significantly impeded the proceeding, and withheld information requested by the Department, pursuant to sections 776(a)(2)(A), (C), and (D) of the Act, we determine, as in the *Preliminary Determination,* that in selecting from among the facts available an adverse inference is appropriate to determine the PRC-wide rate, recalculated for the final determination, because of the PRC-wide entity's failure to cooperate to the best of its ability.[24]

Selection of the Adverse Facts Available Rate

In deciding which facts to use as AFA, section 776(b) of the Act and 19 CFR 351.308(c)(1) provide that the Department may rely on information derived from (1) the petition, (2) a final determination in the investigation, (3) any previous review or determination, or (4) any information placed on the record. In selecting a rate for AFA, the Department selects a rate that is sufficiently adverse "as to effectuate the purpose of the facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner."[25] It is also the Department's practice to select a rate that ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."[26]

Generally, the Department finds selecting the highest rate in any segment of the proceeding as AFA to be appropriate.[27] It is the Department's practice to select, as AFA, the higher of the (a) highest margin alleged in the petition, or (b) the highest calculated rate of any respondent in the investigation.[28] In the instant investigation, as AFA, we have assigned to the PRC-wide entity the highest petition rate (as recalculated for the final determination) on the record of this proceeding that can be corroborated, 33.28 percent, as re-calculated for the final determination.[29] For the final determination in this investigation, the Department has selected this rate as the most appropriate from the available sources to effectuate the purposes of AFA. Accordingly, the Department has assigned both the Guang Ya Group/New Zhongya/Xinya and the PRC-wide entity an AFA rate of 33.28 percent.

Corroboration

Section 776(c) of the Act provides that, when the Department relies on secondary information in using the facts otherwise available, it must, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. We have interpreted "corroborate" to mean that we will, to the extent practicable, examine the reliability and relevance of the information submitted.[30]

As total AFA, the Department preliminarily selected the highest adjusted petition rate of 33.28 percent.[31] In the *Amended Preliminary Determination,* in accordance with section 776(c) of the Act, we corroborated our AFA margin by comparing it to the control number ("CONNUM") margins we found for the cooperating mandatory respondents. We found that the margin of 33.18 percent had probative value because it was in the range of CONNUM model margins we found for the mandatory respondents, the Guang Ya Group/New Zhongya/Xinya, during the period of

[21] *See* Guang Ya Group/New Zhongya/Xinya AFA Memo.

[22] *See, e.g., Synthetic Indigo From the People's Republic of China; Notice of Final Determination of Sales at Less Than Fair Value,* 65 FR 25706, 25707 (May 3, 2000).

[23] *See Amended Preliminary Determination; see also* the December 10, 2010, Memorandum to the File, regarding the Investigation of Certain Aluminum Extrusions from the People's Republic of China: Petition Rate recalculation; ("Amended Prelim Petition Rate Recalculation Memo"); and the December 10, 2010, Memorandum to the File, regarding the Amended Preliminary Determination Analysis Memorandum ("Amended Preliminary Determination Analysis Memo").

[24] *See* Petition Rate Recalculation Memo.

[25] *See Notice of Final Determination of Sales at Less than Fair Value: Static Random Access Memory Semiconductors From Taiwan,* 63 FR 8909, 8932 (February 23, 1998).

[26] *See Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of the Seventh Administrative Review; Final Results of the Eleventh New Shipper Review,* 70 FR 69937, 69939 (November 18, 2005); See also SAA at 870.

[27] *See, e.g., Certain Cased Pencils from the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review and Intent to Rescind in Part, 70 FR 76755, 76761 (December 28, 2005)* unchanged in final, *Certain Cased Pencils from the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review,* 71 FR 38366 (July 6, 2006), and accompanying Issues and Decision Memorandum at Comment 10.

[28] *See Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Quality Steel Products from the People's Republic of China,* 65 FR 34660 (May 21, 2000), and accompanying Issues and Decision Memorandum at "Facts Available."

[29] *See* Petition Rate Recalculation Memo; *see also* Comment 1C, Labor Wage Rate in the accompanying Issues and Decision Memorandum.

[30] *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil,* 65 FR 5554, 5568 (February 4, 2000); *see, e.g., Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews,* 61 FR 57391, 57392 (November 6, 1996).

[31] *See Amended Preliminary Determination; see also* Amended Prelim Petition Rate Recalculation Memo; and the December 21, 2010, Memorandum to Christian Marsh, Deputy Assistant Secretary for Import Administration, from Wendy Frankel, Director, Office 8, entitled "Ministerial Error Memorandum, Aluminum Extrusions from the People's Republic of China, Preliminary Determination of Sales at Less Than Fair Value" ("Ministerial Error Memo"), at Issue 4.

investigation.[32] Accordingly, we found that the rate of 33.28 percent, which is only one tenth of a one percent difference from the rate applied in the *Amended Preliminary Determination* is corroborated within the meaning of section 776(c) of the Act.[33]

Because there are no cooperating mandatory respondents to corroborate the 33.28 percent margin used as AFA for the Guang Ya Group/New Zhongya/Xinya and the PRC-wide entity, to the extent appropriate information was available, we revisited our pre-initiation analysis of the adequacy and accuracy of the information in the petition. *See* Antidumping Duty Investigation Initiation Checklist: Aluminum Extrusions from the People's Republic of China, dated April 20, 2010 ("Initiation Checklist"). We examined evidence supporting the calculations in the petition and the supplemental information provided by Petitioners prior to initiation to determine the probative value of the margins alleged in the petition. During our pre-initiation analysis, we examined the information used as the basis of export price and normal value ("NV") in the petition, and the calculations used to derive the alleged margins. Also during our pre-initiation analysis, we examined information from various independent sources provided either in the petition or, based on our requests, in supplements to the petition (*e.g.,* Global Trade Atlas, and Petitioners' experience with selling and producing the merchandise under consideration), which corroborated key elements of the export price and NV calculations. *See Initiation Checklist* at 6–10. We received no comments as to the relevance or probative value of this information. In our examination of the petition data to corroborate the 33.28 percent AFA rate for the final determination, the Department found nothing impinging the reliability or relevance of the petition rate, as adjusted.

We did receive comments on the Department's wage rate calculation, which was utilized to derive the petition margin. We have evaluated those comments and recalculated the labor wage rate used in calculating the Petition margin.[34]

Therefore, the Department finds that the margin of 33.28 percent has probative value for the purpose of being selected as the AFA rate assigned to the Guang Ya Group/New Zhongya/Xinya and the PRC-wide entity.

Combination Rates

In the *Preliminary Determination,* the Department stated that it would assign combination rates for respondents that are eligible for a separate rate in this investigation.[35] This practice is described in the *Separate Rate Policy Bulletin.*[36]

Final Determination Margins

The weighted-average dumping margin percentages are as follows:

Exporter *	Producer	Weighted-average margin
Guang Ya Aluminium Industries Co., Ltd.; Foshan Guangcheng Aluminium Co., Ltd.; Kong Ah International Company Limited; Guang Ya Aluminium Industries (Hong Kong) Limited.	Guang Ya Aluminium Industries Co., Ltd.; Foshan Guangcheng Aluminium Co., Ltd.; Kong Ah International Company Limited; Guang Ya Aluminium Industries (Hong Kong) Limited; Zhaoqing New Zhongya Aluminum Co., Ltd.; Zhongya Shaped Aluminium (HK) Holding Limited; Karlton Aluminum Company Ltd.; Xinya Aluminum & Stainless Steel Product Co., Ltd. (A.K.A. New Asia Aluminum & Stainless Steel Product Co., Ltd.).	33.28
Zhaoqing New Zhongya Aluminum Co., Ltd.; Zhongya Shaped Aluminium (HK) Holding Limited; Karlton Aluminum Company Ltd.	Guang Ya Aluminium Industries Co., Ltd.; Foshan Guangcheng Aluminium Co., Ltd.; Kong Ah International Company Limited; Guang Ya Aluminium Industries (Hong Kong) Limited; Zhaoqing New Zhongya Aluminum Co., Ltd.; Zhongya Shaped Aluminium (HK) Holding Limited; Karlton Aluminum Company Ltd.; Xinya Aluminum & Stainless Steel Product Co., Ltd. (A.K.A. New Asia Aluminum & Stainless Steel Product Co., Ltd.).	33.28
Alnan Aluminium Co., Ltd	Alnan Aluminium Co., Ltd	32.79
Changshu Changsheng Aluminium Products Co., Ltd	Changshu Changsheng Aluminium Products Co., Ltd	32.79
China Square Industrial Limited	Zhaoqing China Square Industry Limited	32.79
Cosco (J.M.) Aluminium Co., Ltd	Cosco (J.M.) Aluminium Co., Ltd.; Jiangmen Qunxing Hardware Diecasting Co., Ltd.	32.79
First Union Property Limited	Top-Wok Metal Co., Ltd	32.79
Foshan Jinlan Non-ferrous Metal Product Co. Ltd	Foshan Jinlan Aluminium Co. Ltd	32.79
Foshan Sanshui Fenglu Aluminium Co., Ltd	Foshan Sanshui Fenglu Aluminium Co., Ltd	32.79
Guangdong Hao Mei Aluminium Co., Ltd	Guangdong Hao Mei Aluminium Co., Ltd	32.79
Guangdong Weiye Aluminium Factory Co., Ltd	Guangdong Weiye Aluminium Factory Co., Ltd	32.79
Guangdong Xingfa Aluminium Co., Ltd	Guangdong Xingfa Aluminium Co., Ltd	32.79
Hanwood Enterprises Limited	Pingguo Aluminium Company Limited	32.79
Honsense Development Company	Kanal Precision Aluminium Product Co., Ltd	32.79
Innovative Aluminium (Hong Kong) Limited	Taishan Golden Gain Aluminium Products Limited	32.79
Jiangyin Trust International Inc	Jiangyin Xinhong Doors and Windows Co., Ltd	32.79
JMA (HK) Company Limited	Guangdong Jianmei Aluminum Profile Company Limited; Foshan JMA Aluminium Company Limited.	32.79
Kam Kiu Aluminium Products Sdn Bhd	Tai Shan City Kam Kiu Aluminium Extrusion Co., Ltd	32.79
Longkou Donghai Trade Co., Ltd	Shandong Nanshan Aluminum Co., Ltd	32.79

[32] See Amended Preliminary Determination Analysis Memo.

[33] *Id.*

[34] *See* Petition Rate Recalculation Memo; *see also* Comment 1C, Labor Wage Rate in the accompanying Issues and Decision Memorandum.

[35] *See Preliminary Determination; see also Aluminum Extrusions from the People's Republic of China: Initiation of Antidumping Duty Investigation,* 75 FR 22109 ("*Initiation Notice*").

[36] *See* Memorandum entitled "Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries" dated April 5, 2005, available at *http://ia.ita.doc.gov/policy/index.html.*

Exporter *	Producer	Weighted-average margin
Ningbo Yili Import and Export Co., Ltd	Zhejiang Anji Xinxiang Aluminum Co., Ltd	32.79
North China Aluminum Co., Ltd	North China Aluminum Co., Ltd	32.79
PanAsia Aluminium (China) Limited	PanAsia Aluminium (China) Limited	32.79
Pingguo Asia Aluminum Co., Ltd	Pingguo Asia Aluminum Co., Ltd	32.79
Popular Plastics Co., Ltd	Hoi Tat Plastic Mould & Metal Factory	32.79
Press Metal International Ltd	Press Metal International Ltd	32.79
Shenyang Yuanda Aluminium Industry Engineering Co. Ltd	Zhaoqing Asia Aluminum Factory Company Limited; Guang Ya Aluminum Industries Co., Ltd.	32.79
Tai-Ao Aluminium (Taishan) Co., Ltd	Tai-Ao Aluminium (Taishan) Co., Ltd	32.79
Tianjin Ruixin Electric Heat Transmission Technology Co., Ltd	Tianjin Ruixin Electric Heat Transmission Technology Co., Ltd	32.79
USA Worldwide Door Components (Pinghu) Co., Ltd; Worldwide Door Components (Pinghu) Co.	USA Worldwide Door Components (Pinghu) Co., Ltd	32.79
Zhejiang Yongkang Listar Aluminium Industry Co., Ltd	Zhejiang Yongkang Listar Aluminium Industry Co., Ltd	32.79
Zhongshan Gold Mountain Aluminium Factory Ltd	Zhongshan Gold Mountain Aluminium Factory Ltd	32.79
PRC-wide Entity		33.28

* Because Xinya did not export subject merchandise to the United States during the POI, for the final determination, Xinya is not being considered for a separate rate.

Disclosure

We will disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing U.S. Customs and Border Protection ("CBP") to continue to suspend liquidation of all imports of subject merchandise entered or withdrawn from warehouse, for consumption on or after the date of publication of the *Preliminary Determination* in the **Federal Register.** We will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds U.S. price, as follows: (1) The rate for the exporter/producer combinations listed in the chart above will be the rate we have determined in this final determination; (2) for all PRC exporters of subject merchandise which have not received their own rate, the cash-deposit rate will be the PRC-wide rate; and (3) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash-deposit rate will be the rate applicable to the PRC exporter/producer combination that supplied that non-PRC exporter. These suspension-of-liquidation instructions will remain in effect until further notice.

Additionally, as the Department has determined in its concurrent CVD investigation that the merchandise under investigation exported by the Guang Ya Group and New Zhongya benefitted from export subsidies, we will instruct CBP to require an antidumping cash deposit or posting of a bond equal to the weighted-average amount by which the NV exceeds the U.S. price for the Guang Ya Group/New Zhongya/Xinya, as indicated above, reduced by the simple average of the amounts determined to constitute export subsidies for the Guang Ya Group and New Zhongya (0.26 percent).[37] For the separate-rate companies, none of which were selected as respondents in the CVD investigation, we will instruct CBP to reduce the dumping margin by the amount of export subsidies included in the All Others rate from the CVD final determination (42.16 percent), published concurrently with this notice.[38]

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission ("ITC") of our final determination of sales at LTFV. As our final determination is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will, within 45 days, determine whether the domestic industry in the United States is materially injured or threatened with material injury, by reason of imports or sales (or the likelihood of sales) for importation of the subject merchandise. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP to assess antidumping duties on all imports of the subject merchandise entered or withdrawn from warehouse for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding APO

This notice also serves as a reminder to the parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination and notice are issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: March 28, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

Appendix I—List of Issues

I. General Issues

Comment 1: Labor Wage Rate

A. Whether the Department Should Calculate the Surrogate Value for Labor Using Multiple Surrogate Countries or a Single Country, India

B. If the Department Continues to Rely on a Basket of Countries, Whether that Data Should Be Limited to 2006 Data Onward and Should Exclude Ecuador

C. Whether the Department's Wage Rate Calculation as to the Ukraine is in Error

D. Whether To Use 2009 GNI Data Because it is Contemporaneous With the POI

E. Whether To Revise the Department's "Bookend" Countries Using Absolute Differences in GNI Data

[37] *See* Aluminum Extrusions from the People's Republic of China: Final Affirmative Countervailing Duty Determination, and accompanying Issues and Decision Memorandum, dated concurrently with this notice; see also Memorandum: Countervailing Duty Investigation of Aluminum Extrusions from the People's Republic of China: Derivation of Adverse Facts Available (AFA) Net Subsidy Rate Applied in Final Determination (March 28, 2011).

[38] *Id.*

F. Whether To Use the 2008 Wage Data for the Philippines Rather Than the 2003 Data
Comment 2: Double Remedies
Comment 3: Scope of the Antidumping and Countervailing Duty Investigations
A. Petitioners' Proposed Changes to the Scope
B. Clarifying Language for Covered Kits and Subassemblies
C. Certain Special High Purity/High Accuracy OPC Tubes
D. Shower Doors
E. Finish Types
F. Wall Thicknesses of Various Sizes
G. Heat Sinks
H. Baluster Kits
I. Grading Rings
J. Aluminum Tubes and Fin Evaporator Coils
Comment 4: Affiliation and Collapsing
Comment 5: Application of Total AFA
Comment 6: Whether To Recalculate Billet Consumption Using Partial AFA or Neutral Facts Available
Comment 7: Whether To Apply Partial AFA To New Zhongya's Constructed Export Price Sales

II. Other Issues

Because the issues identified below have been rendered moot by the Department's Application of Total AFA to the Guang Ya Group/New Zhongya/Xinya Single Entity, we have not responded to these comments for the final determination.

A. General Issues
- Targeted Dumping
- Financial Ratios
- Surrogate Value for Aluminum Ingots
- Surrogate Value for Coating Powders
- Surrogate Value for Paints
- Surrogate Values for New Factors of Production: Aluminum Billets, Sodium Carbonate, Hydrochloric Acid, and Paints
- Surrogate Values for Movement Expenses: Foreign Inland Freight, Barge Freight, Foreign Brokerage and Handling, Ocean Freight, U.S. Brokerage and Handling, and U.S. Inland Freight

B. The Guang Ya Group Issues
- Whether To Apply Partial AFA to Channel One Sales
- Whether To Recalculate Credit Expenses Using Partial AFA
- Whether To Include Bad Debt in Indirect Selling Expenses
- Treatment of Sample Sales
- Whether To Deduct Discounts from U.S. Price
- Whether To Use AFA to Value Alkali Etching
- Surrogate Value for Steel Shelves

C. New Zhongya Issues
- Whether To Use New Zhongya's Market Economy Price For Aluminum Ingots
- Whether To Recalculate Surrogate Value for Sodium Hydroxide and Ammonium Bifluoride
- Whether To Use AFA To Value Aluminum Sealant, Chromaking Agent, Long Life Additive for Alkaline Etching, Deslagging Agent and Refining Agent
- Wood Packing Materials
- Whether To Value Movement Expenses Using Surrogate Values
- Whether To Deduct the Difference Between Freight Costs and Freight Revenue
- Whether To Treat Scrap Aluminum Ingot as a Direct Material Rather Than a Scrap Offset
- How To Account for the Full Weight of All Packaging Materials
- Whether To Value Wood Packing Materials Using AFA

[FR Doc. 2011–7927 Filed 4–1–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA345

Fisheries of the South Atlantic; Southeast Data, Assessment, and Review (SEDAR); Assessment Process Webinars for South Atlantic Black Sea Bass (Centropristis striata) and Golden Tilefish (Lopholatilus chamaeleonticeps).

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

ACTION: Notice of two SEDAR 25 South Atlantic assessment webinars for black sea bass and golden tilefish.

SUMMARY: The SEDAR 25 assessments of the South Atlantic black sea bass and golden tilefish will consist of a series of workshops and webinars: This notice is for two webinars associated with the Data and Assessment portions of the SEDAR process. See **SUPPLEMENTARY INFORMATION**.

DATES: The SEDAR 25 'post-data, pre-assessment' webinars will be held between May 25, 2011 and June 8, 2011. Please see list below for exact dates and times. The established times may be adjusted as necessary to accommodate the timely completion of discussion relevant to the assessment process. Such adjustments may result in the meeting being extended from, or completed prior to the time established by this notice.

Webinar	Date	Day	Time (Eastern)
1	May 25, 2011	Wednesday	1pm–4 pm.
2	June 8, 2011	Wednesday	9 am–12 pm.

ADDRESSES: The meetings will be held via webinar. The webinar is open to members of the public. Those interested in participating should contact Kari Fenske at SEDAR (See **FOR FURTHER INFORMATION CONTACT** to request an invitation providing webinar access information.)

FOR FURTHER INFORMATION CONTACT: Kari Fenske, SEDAR Coordinator, 4055 Faber Place, Suite 201, North Charleston, SC 29405; telephone: (843) 571–4366; e-mail: *kari.fenske@safmc.net*.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a three-step process including: (1) Data Workshop, (2) Assessment Process utilizing webinars and workshops (3) Review Workshop. The product of the Data Workshop is a data report which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Assessment Process is a stock assessment report which describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Summary documenting Panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, HMS Management Division, and Southeast Fisheries Science Center. Participants include data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and NGOs; International experts; and staff of

Councils, Commissions, and state and Federal agencies.

SEDAR 25 'pre-Data, post-Assessment' Webinar series:

Using datasets recommended from the Data Workshop, participants from both the data workshop and the assessment workshop will come together for two webinars to provide early modeling advice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) at least 10 business days prior to the meeting.

Dated: March 30, 2011.

Tracey L. Thompson,

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

[FR Doc. 2011–7914 Filed 4–1–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA342

Marine Mammals; File No. 15682

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that Mithriel MacKay, Texas A&M University at Galveston, Galveston, TX 75003, has applied in due form for a permit to conduct research on humpback whales (*Megaptera novaeangliae*) [Principal Investigator: Bernd Würsig].

DATES: Written, telefaxed, or e-mail comments must be received on or before May 4, 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. 15682 from the list of available applications.

These documents are also available upon written request or by appointment in the following offices:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713–2289; fax (301) 713–0376; and

Southeast Region, NMFS, 263 13th Avenue South, Saint Petersburg, Florida 33701; phone (727) 824–5312; fax (727) 824–5309.

Written comments on this application should be submitted to the Chief, Permits, Conservation and Education Division, at the address listed above. Comments may also be submitted by facsimile to (301) 713–0376, or by e-mail to *NMFS.Pr1Comments@noaa.gov.* Please include 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: Kristy Beard or Joselyd Garcia-Reyes, (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.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

The applicant requests a five-year permit to conduct research on humpback whales off Puerto Rico. The purpose of the research is to investigate the importance of smaller winter habitats used by humpback whales during the breeding/calving season. Each year, up to 700 humpback whales would be harassed during vessel-based photo-identification, behavioral observation, and passive acoustic recording and by divers during underwater photography. Whales would be harassed year-round, with efforts focused from October through July.

A draft environmental assessment (EA) has been prepared in compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), 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.

Dated: March 29, 2011.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–7958 Filed 4–1–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA341

Marine Mammals; File No. 15324

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that the Alaska Department of Fish and Game, Division of Wildlife Conservation, Juneau, AK has applied for a permit to conduct research on marine mammals in Alaska.

DATES: Written, telefaxed, or e-mail comments must be received on or before May 4, 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. 15324 from the list of available applications.

These documents are also available upon written request or by appointment in the following offices:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713–2289; fax (301) 713–0376; and

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907) 586–7221; fax (907) 586–7249.

Written comments on this application should be submitted to the Chief, Permits, Conservation and Education Division, at the address listed above. Comments may also be submitted by facsimile to (301) 713–0376, or by e-mail to *NMFS.Pr1Comments@noaa.gov.* Please include 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: Tammy Adams or Laura Morse, (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.*), and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

The applicant requests a five-year permit to conduct scientific research on spotted (*Phoca largha*), ringed (*Phoca hispida*), bearded (*Erignathus barbatus*), and ribbon seals (*Histriophoca fasciata*) in the Bering, Chukchi, and Beaufort seas of Alaska. The purpose of this research is to monitor the status and health of all four species by analyzing samples from the subsistence harvest and by documenting movements and habitat use by tracking animals with satellite transmitters. In addition to sampling harvested seals, the applicant would capture up to 200 individuals of each species per year. Captured seals would be measured and sampled (e.g., blood, blubber, skin, muscle, and whisker), and a subsample of these (120 per year per species) will be fitted with transmitters. The applicant also requests permission to harass non-target seals of each species and authorization for a limited number of research-related mortalities. Results of these studies would be used to monitor the health and status of each of the four species' populations, improve population assessments, and develop mitigation measures to minimize disturbance to these species that are important to the indigenous people of Alaska for subsistence food, materials, and for cultural significance. Samples would be imported from Russia, Canada, Svalbard (Norway) and exported to Canada for analyses.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

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.

Dated: March 29, 2011.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–7956 Filed 4–1–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA339

Marine Mammals; File No. 15271

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

ACTION: Notice; issuance of permit.

SUMMARY: Notice is hereby given that James T. Harvey, Moss Landing Marine Laboratories, 8272 Moss Landing Road, Moss Landing, CA 95039 has been issued a permit to conduct research on blue (*Balaenoptera musculus*), fin (*B. physalus*), humpback (*Megaptera novaeangliae*), and gray (*Eschrichtius robustus*) whales.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following offices:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713–2289; fax (301) 713–0376;

Northwest Region, NMFS, 7600 Sand Point Way NE, BIN C15700, Bldg. 1, Seattle, WA 98115–0700; phone (206) 526–6150; fax (206) 526–6426; and

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562) 980–4001; fax (562) 980–4018.

FOR FURTHER INFORMATION CONTACT: Kristy Beard or Amy Hapeman, (301) 713–2289.

SUPPLEMENTARY INFORMATION: On August 31, 2010, notice was published in the **Federal Register** (75 FR 53271) that a request for a permit to conduct research on the species identified above had been submitted by the above-named applicant. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

The five-year permit authorizes research on large whale species off California, Oregon, and Washington; the primary research area is off the Southern California Bight, San Luis Obispo, Monterey Bay, and San Francisco. Researchers are authorized to approach whales for photo-identification and biopsy sampling. A subset of whales may be suction-cup tagged, dart-tagged, or tagged with small implantable tags. The permit also authorizes incidental harassment of California sea lions (*Zalophus californianus*), harbor seals (*Phoca vitulina richardii*), Pacific white-sided dolphins (*Lagenorhynchus obliquidens*), Northern right whale dolphins (*Lissodelphis borealis*), harbor porpoise (*Phocoena phocoena*) and short-beaked common dolphins (*Delphinus delphis*).

An environmental assessment (EA) was prepared analyzing the effects of the permitted activities on the human environment in compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Based on the analyses in the EA, NMFS determined that issuance of the permit would not significantly impact the quality of the human environment and that preparation of an environmental impact statement was not required. That determination is documented in a Finding of No Significant Impact (FONSI), signed on March 24, 2011.

As required by the ESA, issuance of this permit was based on a finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of such endangered species; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: March 29, 2011.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–7954 Filed 4–1–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA344

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The review panel (Panel) for assessment methods for data-poor species will hold a work session that is open to the public.

DATES: The Review of Assessment Methods for Data-Poor Species will be held beginning at 8 a.m., Monday, April 25, 2011 and end at 5:30 p.m. or as necessary to complete business for the day. The Panel will reconvene on Tuesday, April 26 and will continue through Friday, April 29, 2011 beginning at 8 a.m. and ending at 5:30 p.m. each day, or as necessary to complete business. The Panel will adjourn on Friday, April 29, 2011.

ADDRESSES: The Review of Assessment Methods for Data-Poor Species will be held at the Santa Cruz Laboratory of the NMFS Southwest Fisheries Science Center, 110 Shaffer Road, Santa Cruz, CA 95060; telephone: (831) 420–3900.

Council address: Pacific Fishery Management Council (Pacific Council), 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Ms. Stacey Miller, NMFS Northwest Fisheries Science Center; telephone: (541) 961–8475; or Mr. John DeVore, Pacific Fishery Management Council; telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION: The purpose of the Review of Assessment Methods for Data-Poor Species is to review assessment methods for use on data-poor or data-limited stocks in the Pacific Council's Groundfish Fishery Management Plan (FMP) and provide a list of endorsed methods to the Pacific Fishery Management Council. Stock assessment methods including Depletion-Corrected Average Catch (DCAC) and Depletion-Based Stock Reduction Analysis (DB–SRA) will be reviewed at the meeting. Several developments of these methods have been proposed, which could raise stocks from Category 3 (catch-based only) to Category 2 in the Groundfish FMP tier system. Category 2 stocks are those where a basic assessment model is fit to trend information.

No management actions will be decided by the Panel. The Panel's role will be development of recommendations and reports for consideration by the Pacific Council at its June meeting in Spokane, WA.

Although non-emergency issues not contained in the meeting agenda may come before the Panel participants for discussion, those issues may not be the subject of formal Review Panel action during this meeting. Panel action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Panel participants' intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: March 30, 2011.

Tracey L. Thompson,

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

[FR Doc. 2011–7913 Filed 4–1–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA332

General Advisory Committee and Scientific Advisory Subcommittee to the U.S. Section to the Inter-American Tropical Tuna Commission; Meeting Announcement

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

ACTION: Notice of public meeting.

SUMMARY: NMFS announces a meeting of the General Advisory Committee (GAC) to the U.S. Section to the Inter-American Tropical Tuna Commission (IATTC) on May 26, 2011, and a meeting of the Scientific Advisory Subcommittee (SAS) on May 25, 2011. Meeting topics are provided under the **SUPPLEMENTARY INFORMATION** section of this notice.

DATES: The meeting of the SAS will be held on May 25, 2011, from 9 a.m. to 5 p.m. PDT (or until business is concluded), and the meeting of the GAC will be held on May 26, 2011, from 9 a.m. to 5 p.m. PDT (or until business is concluded).

ADDRESSES: Both meetings will be held in the Large Conference Room (Room 370) at NMFS, Southwest Fisheries Science Center, 3333 North Torrey Pines Court, La Jolla, California, 92037–1023. Please notify Heidi Hermsmeyer prior to May 6, 2011, of your plans to attend either meeting, or interest in a teleconference option.

FOR FURTHER INFORMATION CONTACT: Heidi Hermsmeyer, Southwest Region, NMFS at *Heidi.Hermsmeyer@noaa.gov,* or at (562) 980–4036.

SUPPLEMENTARY INFORMATION: In accordance with the Tuna Conventions Act, as amended, the Department of State has appointed a General Advisory Committee (GAC) and a Scientific Advisory Subcommittee (SAS) to the U.S. Section to the IATTC. The U.S. Section consists of four U.S. Commissioners to the IATTC and a representative of the Deputy Assistant Secretary of State for Oceans and Fisheries. The GAC and SAS support the U.S. Section to the IATTC in an advisory capacity; in particular, they provide advice on the development of U.S. policies, positions, and negotiating tactics. NOAA Fisheries Southwest Regional office administers the GAC and SAS in cooperation with the Department of State. The next annual meeting of the IATTC is scheduled for June 29–July 8, 2011, in La Jolla, CA. For more information on this meeting, please visit the IATTC's Web site: *http://www.iattc.org/HomeENG.htm.*

Meeting Topics

The SAS meeting topics will include, but are not limited to, the following: (1) Relevant stock status updates, including yellowfin, bigeye, skipjack, and albacore tunas; (2) updates on bycatch mitigation measures; (3) evaluation of the IATTC's recommended conservation measures, U.S. proposals, and proposals from other IATTC members; (4) input to the GAC; and (5) other issues as they arise.

The GAC meeting topics will include, but are not limited to, the following: (1) Relevant stock status updates, including yellowfin, bigeye, skipjack, and albacore tunas; (2) U.S. regulatory changes that could affect tuna fisheries in the eastern Pacific Ocean; (3) updates on international agreements that could affect the IATTC; (4) the upcoming meeting of the five tuna regional fishery management organizations (also known as Kobe III); (5) the status of U.S legislation to implement the Antigua Convention; (6) outcomes of the IATTC Capacity Working Group meeting; (7) input from the SAS; (8) input and advice from the GAC on issues that may arise at the upcoming 2011 IATTC meetings, including the IATTC's recommended conservation measures, potential U.S. proposals, and potential proposals from other IATTC members; and (9) other issues as they arise.

Special Accommodations

The meeting location is physically accessible to people with disabilities. Requests for sign language

interpretation or other auxiliary aids should be directed to Heidi Hermsmeyer at (562) 980–4036 by May 6, 2011.

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

Dated: March 29, 2011.

Emily H. Menashes,

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

[FR Doc. 2011–7946 Filed 4–1–11; 8:45 am]

BILLING CODE 3510–22–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities Under OMB Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* (PRA), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected costs and burden.

DATES: Comments must be submitted on or before May 4, 2011.

For Further Information or a Copy Contact: Susan Nathan, Senior Special Counsel, Division of Market Oversight, Commodity Futures Trading Commission, (202) 418–5133; e-mail: *snathan@cftc.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA, Federal agencies must obtain approval from OMB for each collection of information they collect or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3 and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires Federal agencies to provide a 60-day notice in the **Federal Register** for each proposed collection of information before submitting the collection to OMB for approval. Accordingly, on January 11, 2011 the Commodity Futures Trading Commission (Commission or CFTC) published such a notice in the **Federal Register**, in connection with a recently adopted interim final rule for reporting pre-enactment swap transactions.[1] The comment period closed on March 14, 2011; one comment was received.[2]

OMB regulations at 5 CFR 1320, which implement provisions of the PRA, further require that on or before the date of submission to OMB of an ICR, an agency shall publish in the **Federal Register** a notice stating that OMB approval is being sought and requesting that comments be submitted to OMB within 30 days of the notice's publication. 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. Accordingly, the Commission has submitted a request to OMB for approval of a collection of information for 17 CFR part 44—Interim Final Rule for Reporting Pre-Enactment Swap Transactions. The Commission is requesting a 3-year term of approval for this information collection activity.

Abstract: Section 729 of the Wall Street Reform and Consumer Protection Act (Dodd-Frank Act)[3] required the Commission to adopt, within 90 days of enactment of the Dodd-Frank Act, an interim final rule for the reporting of swap transactions entered into before July 21, 2010 whose terms had not expired as of that date ("pre-enactment unexpired swaps"). Pursuant to this mandate, the CFTC adopted an interim final rule requiring specified parties to pre-enactment unexpired swap transactions to report certain information related to those transactions to a swap data repository (SDR) or to the Commission by a compliance date to be established in reporting rules required under Section 2(h)(5) of the Commodity Exchange Act (CEA), or within 60 days after an appropriate SDR becomes registered under Section 21 of the CEA and commences operations, whichever occurs first. An interpretative note to the rule advises that, in order to comply with the reporting provisions of the rule, reporting parties that may be required to report to an SDR or to the CFTC will need to preserve information related to the terms of such swaps.

The Commission initially estimated that approximately 1,800 entities would be affected by this rule. That number was based on the current estimate of the number of swap dealers (250), major swap participants (50) and other counterparties (1,500).[4] Because the Commission has not heretofore regulated the swap market, it has not previously collected data to support its estimate. In its comment letter, the Coalition correctly observed that this estimate did not take into account roughly 2,900 members of the Coalition. Moreover, the Commission has estimated that there are roughly 30,000 non-financial entities engaging in swap transactions[5] (including the Coalition members) which may be subject to the requirements of the interim final rule. Accordingly, the initial estimate of 1,800 affected entities has been revised to 32,000.

Because the interim final rule requires only that affected entities maintain data in its current form, and imposes no collection, manipulation, compilation or reporting of the data, the Commission initially estimated that the hourly burden would be *de minimis*.[6] The Coalition suggests that the burden to be measured is not the time it would take each affected entity to advise its employees to retain particular records, but would also include time spent in reviewing, interpreting and analyzing the CEA, the Commission's jurisdiction over pre-enactment unexpired swaps, and the relevance of the interim final rule to the particular industry. Finally, the Coalition notes that the burden to "collect and retain" records is only a first step; should the Commission require any manipulation, compilation or interpretation of the data the burden will be significantly higher. The Commission has considered these comments and for the following reasons has concluded that its estimate is not inconsistent with the burden imposed by the interim final rule. The rule requires merely that affected parties retain data related to swap transactions to the extent that and in whatever form they currently keep such data until such time as permanent rules governing data recordkeeping and reporting are proposed and adopted by the Commission. None of the activities cited by the Coalition are contemplated by the interim final rule.

Burden Statement: The respondent burden for this collection is estimated to average .5 hours per response. This

[1] The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on January 11, 2011. 76 FR 1603.

[2] Letter dated March 14, 2011, from trade associations comprising the "Not-for-Profit Electric End User Coalition" (Coalition). The Coalition challenged the CFTC's estimates with respect to the number and diversity of affected entities. In response to this comment, the Commission has revised its estimates; these revisions are reflected in the instant notice as well as in the ICR forwarded to OMB.

[3] Public Law 111–203, 124 Stat. 1376 (2010).

[4] 76 FR 1603, 1604.

[5] *See* CFTC NPRM: End-User Exception to Mandatory Clearing of Swaps, 75 FR 80747, 80756 (Dec. 23, 2010). The Commission estimates that there are approximately 30,000 end users who are counterparties to a swap in a given year. While it is possible that the number of end users having pre-enactment swap transactions to report will be significantly lower, the 30,000 figure is the more conservative estimate.

[6] 76 FR 1603, 1604. The estimated average hourly burden was estimated at .5 hours.

estimate includes the time to locate the data related to the pre-enactment unexpired swap transaction and the time to ensure that the data is maintained in such form as it currently exists. The total annual cost burden per respondent is estimated to be $21.05. The Commission based its calculation on an hourly wage rate of $42.05 for a Programmer to maintain the data.[7]

Respondents/Affected Entities: Swap dealers, Major Swap Participants, and other counterparties to a swap transaction (*i.e.,* end-user, non-SD/non-MSP counterparties).

Estimated Number of Respondents: 32,000.

Estimated Total Annual Burden on Respondents: 16,000 hours.

Frequency of Collection: Once.

ADDRESSES: Comments regarding the burden estimated or any other aspect of the information collection, including suggestions for reducing the burden, may be submitted directly to the Office of Information and Regulatory Affairs (OIRA) in OMB, by e-mail at *OIRAsubmissions@omb.eop.gov.* Please provide the Commission with a copy of all submitted comments at the address listed below. Please refer to OMB Reference No. 201101–3038–002, found on *http://reginfo.gov.*

Comments may also be submitted to: Susan Nathan, Senior Special Counsel, Division of Market Oversight, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 2058; e-mail the Agency's Web site at *http://comments.cftc.gov.* Follow the instructions for submitting comments through the Web site.

Comments may also be mailed to: David Stawick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581 or by Hand Delivery/Courier at the same address.

A copy of the supporting statements for the collection of information discussed above may be obtained by visiting *RegInfo.gov.*

[7] In arriving at a wage rate for the hourly costs imposed, Commission staff used the Management & Professional Earnings in the Securities Industry Report, published in 2010 by the Securities Industry and Financial Markets Associations (2010 Report). The sage rate used the median salary of a Programmer as published in the 2010 Report and divided that figure by 2000 annual working hours to arrive at the hourly rate of $42.05. Because the interim final rule requires only that existing data be maintained in its current form, a programmer will be able to perform this task.

Issued by the Commission, this 30th day of March 2011.

David Stawick,

Secretary of the Commission.

[FR Doc. 2011–7943 Filed 4–1–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF DEFENSE

Department of the Air Force

U.S. Air Force Scientific Advisory Board; Notice of Meeting

AGENCY: Department of the Air Force, US Air Force Scientific Advisory Board.

ACTION: Meeting notice.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, the Department of Defense announces that the United States Air Force Scientific Advisory Board (SAB) meeting will take place on 5 April 2011 at the Ogden Air Logistics Center, Club Hill Building 450, 7420 Miller Street, Hill Air Force Base, Utah, 84056. The meeting will be from 8:00 am—4:30 pm. The purpose of the meeting is to hold the SAB quarterly meeting to conduct classified discussions on the various missions of Hill Air Force Base, how capabilities are used in the field, and how this information relates to the FY11 SAB studies tasked by the SECAF.

Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.155, the Administrative Assistant of the Air Force, in consultation with the Office of the Air Force General Counsel, has determined in writing that the public interest requires that all sessions of the United States Air Force Scientific Advisory Board meeting be closed to the public because they will be concerned with classified information and matters covered by sections 5 U.S.C. 552b(c) (1) and (4).

Any member of the public wishing to provide input to the United States Air Force Scientific Advisory Board should submit a written statement in accordance with 41 CFR 102–3.140(c) and section 10(a)(3) of the Federal Advisory Committee Act and the procedures described in this paragraph. Written statements can be submitted to the Designated Federal Officer at the address detailed below at any time. Statements being submitted in response to the agenda mentioned in this notice must be received by the Designated Federal Officer at the address listed below at least five calendar days prior to the meeting which is the subject of this notice. Written statements received after this date may not be provided to or considered by the United States Air Force Scientific Advisory Board until its next meeting. The Designated Federal Officer will review all timely submissions with the United States Air Force Scientific Advisory Board Chairperson and ensure they are provided to members of the United States Air Force Scientific Advisory Board before the meeting that is the subject of this notice.

Due to internal DoD difficulties, beyond the control of the U.S. Air Force Scientific Advisory Board or its Designated Federal Officer, the Board was unable to process the **Federal Register** notice for the 5 April 2011 meeting of the U.S. Air Force Scientific Advisory Board as required by 41 CFR 102–3.150(a). Accordingly, the Advisory Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102–3.150(b), waives the 15-calendar day notification requirement.

FOR FURTHER INFORMATION CONTACT: The United States Air Force Scientific Advisory Board Executive Director and Designated Federal Officer, Lt Col Anthony M. Mitchell, 301–981–7135, United States Air Force Scientific Advisory Board, 1602 California Ave., Ste. #251, Andrews AFB, MD 20762, *anthonym.mitchell@pentagon.af.mil.*

Bao-Anh Trinh,

Air Force Federal Register Liaison Officer.

[FR Doc. 2011–7866 Filed 4–1–11; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice—Nationwide Categorical Waivers Under Section 1605 (Buy American) of the American Recovery and Reinvestment Act of 2009 (Recovery Act)

AGENCY: 772D ENTERPRISE SOURCING SQUADRON, DOD, Air Force.

SUMMARY: The U.S. Department of Air Force, 772d ESS/PK, Senior Center Contracting Official (SOCO) hereby provides notice that on 4 March 2011 a waiver of the Buy American requirements of the American Recovery and Reinvestment Act of 2009, Public Law 1115 (Recovery Act) under the authority of section 1605 (b)(2) [iron, steel, and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of satisfactory quality] for the of the following construction items to be incorporated

into the project FTQW094001 for the construction and replacement of military family housing units at Eielson AFB, Alaska under task order FA8903–06–D–8505–0019. The items are 1″ Collated Screws, Shank #10; 1½″ (Taco) Air Scoops for Hydronic Heating Systems; 1⅝″ Ceramic Coated Bugle Head Course Thread Screws; 2″ (Taco) Air Scoops for Hydronic Heating Systems; 2½″ (Taco) Air Scoops for Hydronic Heating Systems; 2½″ Collated Screws; 3″ Ceramic Coated Bugle Head Course Thread Screws; 3″ Spool Insulators; ¾″ Collated Screws, Shank #10; 3-Bolt Guy Clamp; Ceiling Fan; Ceiling Fan w/Light Kit; Door Hinge Pin Stops; Exterior Wall Mount Two Head Flood Light w/270 Degree Motion Sensor & Brushed Nickel Finish; Ground Fault Circuit Interrupt (GFCI) Receptacles; Handrail Brackets; Maclean Power Systems Guy Attachment; Residential Style Satin Chrome Handrail Bracket; Satin Nickel Outdoor Sconce Light Fixture; Tamper-Resistant Ground Fault Circuit Interrupt (GFCI) Receptacles; Weather-Resistant Ground Fault Circuit Interrupt (GFCI) Receptacles; Pendant Bar Light Fixture; 24″ Bath Vanity Light Fixture; Pendant Chandelier Light Fixture; Linear Fluorescent Ceiling Lighting Fixture (48″ Lensed Fluorescent w/Dimming Ballast & Satin Aluminum Finish); 48″ Bath Vanity Light Fixture; 20″ Utility Shelf Bracket; Chrome Finish Residential Dishwasher Air Gap Cap Fitting; Satin Chrome Finish Convex Wall Mount Door Stops; Residential Microwave w/Range Hood; Residential Style Polished Chrome Towel Ring; Residential Style Polished Chrome Toilet Paper Holder; Residential Style Polished Chrome Double Robe Hook; Residential Style Bright Stainless Steel 60″ Curved Shower Rod & Flanges; Residential Style Polished Chrome 24″ Towel Bar; Residential Style Polished Chrome 30″ Towel Bar; Satin Nickel Finish Wall Mounted Spring Door Stop.

DATES: Effective Date 4 March 2011.

ADDRESSES: ESS/PK; 2261 Hughes Ave., Ste. 163, Lackland AFB, Tx 78236–98612.

FOR FURTHER INFORMATION: Sharon Money, Contracting Officer, 772d ESS/PKA, 2261 Hughes Ave., Ste. 163, Lackland AFB, Tx 78236–98612.

SUPPLEMENTARY INFORMATION: Section 1605 of the Recovery Act requires that no appropriated funds may be used for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States, or unless a waiver is granted by the head of the Federal department or agency. A waiver may be granted if the head of the Federal department or agency determines that one of three exceptions applies: (1) The application of Section 1605 requirements would be inconsistent with the public interest; (2) the iron, steel, or relevant manufactured good is not produced in the United States in sufficient and reasonably available quantities and of satisfactory quality; or (3) the cost of domestic iron, steel or relevant manufactured goods will increase the cost of the overall project by more than 25 percent. In accordance with Section 1605 (c) of the Recovery Act, the Senior Center Contracting Official (SOCO) 772d ESS/PK has determined that the above items of manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality.

The domestic nonavailability determination for these products is based on extensive market research and thorough investigation of the domestic manufacturing landscape. This research identified that these products are manufactured almost exclusively in China.

Bao-Anh Trinh,

Air Force Federal Register Liaison Officer.

[FR Doc. 2011–7869 Filed 4–1–11; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF EDUCATION

[CFDA 84.195N]

Applications for New Awards; National Professional Development Program

AGENCY: Office of English Language Acquisition, Language Enhancement, and Academic Achievement for Limited English Proficient Students, Department of Education.

ACTION: Correction; CFDA number and extension; Notice extending the dates.

SUMMARY: On March 18, 2011, we published in the **Federal Register** (76 FR 14954–14959) a notice inviting applications for new awards for fiscal year (FY) 2011 for the National Professional Development Program. This notice makes corrections to the CFDA number referenced in the March 18 notice and extends the deadline date for transmittal of applications. We are extending the deadline date for this competition because the CFDA numbers identified in the March 18, 2011 notice were incorrect.

FOR FURTHER INFORMATION CONTACT: Ana Garcia. Telephone: (202) 401–1440 or by e-mail: *Ana.garcia@ed.gov.* If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The CFDA numbers identified in the March 18 notice were incorrect. Through this notice, we correct the references to "84.195N" in the second column of page 14954, in the third column of page 14955, in the second and third columns of page 14956, and in the third column of page 14957 to read as "84.365Z". We also correct the reference to CFDA number "84.195" in the third column of page 14956 to read as "84.365".

In addition, the *Deadline for Transmittal of Applications,* listed in the second column of page 14954 and the first column of 14956, has been extended to May 9, 2011.

The *Deadline for Intergovernmental Review* date, listed in the second column of page 14954 and the first column of page 14956, has been extended to July 11, 2011.

The *Applications Available* date as published on page 14954 has been changed to April 4, 2011. Applicants, when submitting their proposals, should ensure that they use the correct CFDA number for this program.

Note: Applications for grants under this program must be submitted electronically using the Government-wide Grants.gov apply site at *http://www.Grants.gov.* For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 7. *Other Submission Requirements* of the March 18 notice.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT.**

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.* To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *http://www.gpo.gov/fdsys.*

Dated: March 30, 2011.

Rosalinda Barrera,

Assistant Deputy Secretary and Director for English Language Acquisition, Language Enhancement and Academic Achievement for Limited English Proficient Students.

[FR Doc. 2011–7941 Filed 4–1–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Advisory Council on Indian Education (NACIE)

AGENCY: U.S. Department of Education.

ACTION: Notice of an open meeting

SUMMARY: This notice sets forth the schedule and proposed agenda of an upcoming meeting of the National Advisory Council on Indian Education (the Council) and is intended to notify the general public of the meeting. This notice also describes the functions of the Council. Notice of the Council's meetings is required under Section 10(a)(2) of the Federal Advisory Committee Act.

DATE AND TIME: April 18–19, 2011;

April 18, 2011—9:30 a.m.–5 p.m. Eastern Daylight Savings Time.

April 19, 2011—9:00 a.m.–5 p.m. Eastern Daylight Savings Time.

Location: Holiday Inn—Washington Capitol, Discovery Room II, 550 C Street, SW., Washington, DC 20024.

Phone: (202) 479–4000.

Web site: http://www.NACIE–ED.org (To RSVP, and for NACIE Meeting Updates, and Final Agenda).

SUPPLEMENTARY INFORMATION: The National Advisory Council on Indian Education is authorized by Section 7141 of the Elementary and Secondary Education Act. The Council is established within the Department of Education to advise the Secretary of Education on the funding and administration (including the development of regulations, and administrative policies and practices) of any program over which the Secretary has jurisdiction and includes Indian children or adults as participants or programs that may benefit Indian children or adults, including any program established under Title VII, Part A of the Elementary and Secondary Education Act. The Council submits to the Congress, not later than June 30 of each year, a report on the activities of the Council that includes recommendations the Council considers appropriate for the improvement of Federal education programs that include Indian children or adults as participants or that may benefit Indian children or adults, and recommendations concerning the funding of any such program.

The purpose of this meeting is to convene the Council to continue its responsibilities for developing recommendations to the Secretary of Education on the funding and administration (including the development of administrative policies and practices) of any program over which the Secretary has jurisdiction and includes Indian children or adults as participants or programs that may benefit Indian children or adults, including any program established under Title VII, Part A of the Elementary and Secondary Education Act, and conduct discussions on the development of the report to Congress that should be submitted no later than June 30, 2011.

Individuals who will need accommodations for a disability in order to attend the meeting (*e.g.,* interpreting services, assistive listening devices, or material in alternative format) should notify Terrie Nelson at (202) 401–0424 no later than April 11, 2011. We will make every attempt to meet requests for accommodations after this date, but, cannot guarantee their availability. The meeting site is accessible to individuals with disabilities.

Public Comment: Time is scheduled on the agenda to receive public comment at approximately 1 p.m.–2:30 p.m. Eastern Daylight Savings Time April 19, 2011. Each speaker will be allowed to make comments to the Council for 3–5 minutes, or those members of the public interested in submitting written comments may do so by submitting comments to the attention of Jenelle Leonard, Office of Indian Education, U.S. Department of Education, and 400 Maryland Avenue SW., Room 3W203, Washington, DC 20202–6400 by April 15, 2011.

FOR FURTHER INFORMATION CONTACT: Jenelle Leonard, Acting Director, Office of Indian Education, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202. Telephone: 202–205–2161. Fax: 202–205–5870.

Detailed minutes of the meeting, and related matters that are informative to the public and consistent with the policy of section 5 U.S.C. 552b(c) will be available to the public within 21 days of the meeting. Records are kept of all Council proceedings and are available for public inspection at the at the Office of Indian Education, United States Department of Education, 400 Maryland Avenue SW., Washington, DC 20202. Monday–Friday, 8:30 a.m.–5 p.m. Eastern Daylight Time.

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister/index.html.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free at 1–866–512–1830; or in the Washington, DC, area at (202) 512–0000.

Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Thelma Meléndez de Santa Ana,

Assistant Secretary, Office of Elementary and Secondary Education.

[FR Doc. 2011–7908 Filed 4–1–11; 8:45 am]

BILLING CODE 4000–01–P

ELECTION ASSISTANCE COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request; Election Assistance Commission's Voting System Testing and Certification Program Manual, Version 1.0

AGENCY: U.S. Election Assistance Commission (EAC).

ACTION: Notice; comment request.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995, the U.S. Election Assistance Commission (EAC) invites the general public and other Federal agencies to take this opportunity to comment on EAC's request to renew an existing information collection, EAC's Voting System Testing and Certification Program Manual, Version 1.0. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents. Comments submitted in response to this notice will be summarized and included

in the request for approval of this information collection by the Office of Management and Budget; they also will become a matter of public record. This notice requests comments solely on the four criteria above. Note: This notice solicits comments on the currently-used Manual, Version 1.0 *only.* Due to lack of a quorum, EAC will postpone making changes to Version 1.0 of the Manual until such a time as a quorum is re-established. See Supplementary Information, below. This information collection was previously published in the **Federal Register** on January 26, 2011.The notice allowed for a 60-day public comment period focused on the areas outlined above. No comments were received on this information. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: Written comments must be submitted on or before 11:59 p.m. EDT on May 4, 2011.

ADDRESSES: Comments and recommendations on the proposed information collection must be submitted in writing through either: (1) Electronically to *votingsystemguidelines@eac.gov;* via mail to Mr. Brian Hancock, Director of Voting System Testing and Certification, U.S. Election Assistance Commission, 1201 New York Avenue, NW., Suite 300, Washington, DC 20005; or via fax to (202) 566–1392. An electronic copy of the manual, version 1.0, may be found on EAC's Web site at *http://www.eac.gov/open/comment.aspx.*

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection, please contact Mr. Brian Hancock, Director, Voting System Testing and Certification, Washington, DC, (202) 566–3100, Fax: (202)566–1392.

SUPPLEMENTARY INFORMATION:

Background

In this notice, EAC seeks comments on the paperwork burdens contained in the current version of the Voting System Testing and Certification Program Manual, Version 1.0 OMB Control Number 3265–0004 *only.* Version 1.0 is the original version of the Manual without changes or updates. EAC is requesting an emergency extension for Version 1.0 and will abandon its Paperwork Reduction Act request for version 2.0 of the Manual at this time.

When EAC drafted Version 1.0 of the Manual in 2006, the agency sought input from experts and stakeholders. Specifically, EAC conducted meetings with representatives from the voting system test laboratory and voting system manufacturing community. The Commission also held a public hearing in which it received testimony from State election officials, the National Institute of Standards and Technology, academics, electronic voting system experts, public interest groups, and the public at large.

In a notice dated November 30, 2010, EAC previously requested comments on a proposed new version of the Manual, Version 2.0. After EAC published its request for comments on Version 2.0, the agency lost its quorum. As a result, EAC has chosen to postpone implementing Version 2.0 of the Manual until such time as the Commission has a quorum again. At that point, EAC will start the Paperwork Reduction Act process from the beginning on Version 2.0 of the Manual. Soliciting comments through an emergency extension will permit EAC to continue to use the Control Number assigned to Version 1.0.

Current Information Collection Request, Version 1.0

Title: Voting System Testing and Certification Program, Version 1.0.

OMB Number: 3265–0004.

Type of Review: Emergency Extension.

Needs and Uses: Section 231(a) of the Help America Vote Act of 2002 (HAVA), 42 U.S.C. 15371(a), requires EAC to "provide for the testing, certification, decertification, and recertification of voting system hardware and software by accredited laboratories." To fulfill this mandate, EAC has developed and implemented the Voting System Testing and Certification Program Manual, Version 1.0. This version is currently in use under OMB Control Number 3265–0004. EAC had hoped to finalize a revised Manual prior to the expiration of the current manual's control number. However, due to lack of a quorum, EAC will continue using the existing manual, version 1.0, necessitating this action. Although participation in the program is voluntary, adherence to the program's procedural requirements is mandatory for participants.

Affected Public: Voting system manufacturers.

Estimated Number of Respondents: 8.

Total Annual Responses: 8.

Estimated Total Annual Burden Hours: 200 hours.

Thomas R. Wilkey,

Executive Director, U.S. Election Assistance Commission.

[FR Doc. 2011–7942 Filed 4–1–11; 8:45 am]

BILLING CODE 6820–KF–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Northern New Mexico

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a combined meeting of the Environmental Monitoring, Surveillance and Remediation Committee and Waste Management Committee of the Environmental Management Site-Specific Advisory Board (EM SSAB), Northern New Mexico (known locally as the Northern New Mexico Citizens' Advisory Board (NNMCAB). The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, April 20, 2011, 2 p.m.–4 p.m.

ADDRESSES: Holiday Inn Express and Suites, 60 Entrada Drive, Los Alamos, New Mexico 87544.

FOR FURTHER INFORMATION CONTACT: Menice Santistevan, Northern New Mexico Citizens' Advisory Board (NNMCAB), 1660 Old Pecos Trail, Suite B, Santa Fe, NM 87505. Phone (505) 995–0393; Fax (505) 989–1752 or E-mail: *msantistevan@doeal.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Purpose of the Environmental Monitoring, Surveillance and Remediation Committee (EMS&R): The EMS&R Committee provides a citizens' perspective to NNMCAB on current and future environmental remediation activities resulting from historical Los Alamos National Laboratory operations and, in particular, issues pertaining to groundwater, surface water and work required under the New Mexico Environment Department Order on Consent. The EMS&R Committee will keep abreast of DOE–EM and site programs and plans. The committee will work with the NNMCAB to provide assistance in determining priorities and the best use of limited funds and time. Formal recommendations will be proposed when needed and, after consideration and approval by the full NNMCAB, may be sent to DOE–EM for action.

Purpose of the Waste Management (WM) Committee: The WM Committee reviews policies, practices and

procedures, existing and proposed, so as to provide recommendations, advice, suggestions and opinions to the NNMCAB regarding waste management operations at the Los Alamos site.

Tentative Agenda:

- Welcome and Introductions.
- Committee Business Items.
- Presentation: Update on Technical Area-21 Cleanup Under the American Recovery and Reinvestment Act.
- Bus Tour of TA–21.
- Wrap-up Discussion and Adjournment.

Public Participation: The NNMCAB's EMS&R and WM Committees welcome the attendance of the public at their combined committee meeting and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Menice Santistevan at least seven days in advance of the meeting at the telephone number listed above. Written statements may be filed with the Committees either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Menice Santistevan at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Menice Santistevan at the address or phone number listed above. Minutes and other Board documents are on the Internet at: *https://plus44.safe-order.net/nnmcab//2-meetings/board-minutes.htm.*

Issued at Washington, DC on March 29, 2011.

LaTanya Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2011–7892 Filed 4–1–11; 8:45 am]

BILLING CODE 6405–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. DI11–4–000]

Wediko Children's Services; Notice of Declaration of Intention and Soliciting Comments, Protests, and/or Motions To Intervene

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Declaration of Intention.

b. *Docket No:* DI11–4–000.

c. *Date Filed:* March 21, 2011.

d. *Applicant:* Wediko Children's Services.

e. *Name of Project:* Wediko Children's Services Hydroelectric Project.

f. *Location:* The Wediko Children's Services Hydroelectric Project will be located on Black Pond Brook, near the town of Windsor, Hillsborough County, New Hampshire.

g. *Filed Pursuant to:* section 23(b)(1) of the Federal Power Act, 16 U.S.C. 817(b).

h. *Applicant Contact:* Dennis P. Calcutt, Wediko Children's Services, 11 Bobcat Blvd, Winsor, NH 03244; Telephone: (603) 478–5236; e-mail: *http://www.dcalcutt@Wediko-nh.org.*

i. *FERC Contact:* Any questions on this notice should be addressed to Henry Ecton, (202) 502–8768, or E-mail address: *henry.ecton@ferc.gov.*

j. *Deadline for filing comments, protests, and motions:* May 2, 2011.

All documents should be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp.* If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and seven copies should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

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.* Please include the docket number (DI11–4–000) on any comments, protests, and/or motions filed.

k. *Description of Project:* The run-of-river Wediko Children's Services Hydroelectric Project would consist of: (1) An existing pond with a surface area of 260-acre-feet; (2) an existing 91-foot-long, 11-foot-high dam; (3) a proposed 350-foot-long, 18-to-24-inch-diameter above-ground steel penstock, routed along a previous penstock alignment to the powerhouse; (4) a proposed powerhouse, containing a 16–18-kW turbine, switchgear, and auxiliary equipment; (5) an existing tailrace, returning flows to Black Pond Brook; and (6) appurtenant facilities.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the proposed project. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. *Locations of the Application:* Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the Web at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. 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 at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, and/or Motions to Intervene—Anyone may submit comments, a protest, and a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, and/or motions to intervene must be received on or before the

specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "PROTESTS", AND/OR "MOTIONS TO INTERVENE", as applicable, and the Docket Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: March 28, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–7779 Filed 4–1–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13124–002]

Copper Valley Electric Association; Notice of Scoping Document 2 and Soliciting Scoping Comments for an Oirginal Application for License

a. *Type of Application:* Original License Application.

b. *Project No.:* 13124–002.

c. *Applicant:* Copper Valley Electric Association (Copper Valley)

d. *Name of Project:* Allison Creek Project.

e. *Location:* On the south side of Port Valdez, on the shore opposite from the community of Valdez, Alaska, near the Alyeska Marine Terminal and the terminus of the Trans Alaska Pipeline System (TAPS) in Township 9 South, Range 6 West, Seward Meridian, Alaska.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant Contact:* Robert A. Wilkinson, CEO, Copper Valley Electric Association, P.O. Box 45, Mile 187 Glenn Highway, Glennallen, Alaska 99588, 907–822–3211, *allisonlake@cvea.org.*

h. *FERC Contact:* Kim A. Nguyen, phone (202) 502–6105; e-mail at *kim.nguyen@ferc.gov.*

i. *Deadline for filing scoping comments:* April 27, 2011. All documents may be filed electronically via the Internet. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp.* If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and seven copies should be mailed to: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. 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. Please include the project number (P–13124–002) on any comments filed.

j. *The proposed project would consist of:* (1) A 100-foot by 10-foot diversion structure on Allison Creek; (2) a 7,600-foot-long, 42-inch-diameter buried/above-ground steel pipeline; (3) a 40-foot by 40-foot powerhouse; (4) two 6,500 kilowatt Pelton turbines; (5) a 150-foot-long tailrace; (6) a switchyard; (7) 3.8-mile-long, 34.5 kilovolt transmission line; and (8) appurtenant facilities.

k. On April 7, 2010, Copper Valley filed a Notice of Intent (NOI) to file an application for an original license and requested to use the Commission's Alternative Licensing Process (ALP, which was granted on June 7, 2010. On April 13, 2010, Copper Valley filed a Pre-Application Document (PAD) including a Preliminary Draft Environmental Assessment (PDEA) for the project. Since the filing of the PAD and PDEA, Copper Valley has proposed changes to the project design and has filed a Scoping Document 2 (SD2) describing these modifications and changes to the proposed project. Therefore, we are noticing SD2 and soliciting comments on this new proposal. Under the ALP, Copper Valley plans to file a draft License Application for review and comments in early May 2011, with the final License Application to follow by August 31, 2011.

l. SD2 is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp.* Enter the docket number excluding the last three digits in the docket number field to access the document. 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, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*, for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address above.

Dated: March 28, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–7780 Filed 4–1–11; 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 corporate filings:

Docket Numbers: EC11–55–000

Applicants: DIRECT ENERGY SERVICES LLC, Gateway Energy Services Corporation, Direct Energy (GW), Inc.

Description: Gateway Energy Services Corporation, *et al.* Joint Application For Authorization of Transaction Under section 203 of the Federal Power Act, and Request for Expedited Consideration.

Filed Date: 03/25/2011

Accession Number: 20110325–5156

Comment Date: 5 p.m. Eastern Time on Friday, April 15, 2011

Take notice that the Commission received the following exempt wholesale generator *filings:*

Docket Numbers: EG11–71–000

Applicants: Summit Texas Clean Energy, LLC

Description: Self-Certification of EWG Status of Summit Texas Clean Energy, LLC.

Filed Date: 03/24/2011

Accession Number: 20110324–5027

Comment Date: 5 p.m. Eastern Time on Thursday, April 14, 2011

Docket Numbers: EG11–72–000

Applicants: White Stallion Energy Center, LLC

Description: Self-Certification of EG or FC of White Stallion Energy Center, LLC.

Filed Date: 03/25/2011

Accession Number: 20110325–5109

Comment Date: 5 p.m. Eastern Time on Friday, April 15, 2011

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER07–1195–001

Applicants: Mittal Steel USA, Inc.

Description: Amendment to Notice of Non-Material Changes in Status, ArcelorMittal USA Inc.

Filed Date: 03/25/2011
Accession Number: 20110325–5092
Comment Date: 5 p.m. Eastern Time on Friday, April 15, 2011

Docket Numbers: ER07–1195–001
Applicants: Mittal Steel USA, Inc.
Description: Supplement to Motion for Determination of Category 1 Seller Status of ArcelorMittal USA Inc.
Filed Date: 03/25/2011
Accession Number: 20110325–5093
Comment Date: 5 p.m. Eastern Time on Friday, April 15, 2011

Docket Numbers: ER11–2517–002
Applicants: South Carolina Electric & Gas Company
Description: South Carolina Electric & Gas Company submits tariff filing per 35: Attachment C Refile—Compliance filing to be effective 3/25/2011.
Filed Date: 03/25/2011
Accession Number: 20110325–5118
Comment Date: 5 p.m. Eastern Time on Friday, April 15, 2011

Docket Numbers: ER11–2688–001
Applicants: PSEG Energy Resources & Trade LLC
Description: PSEG Energy Resources & Trade LLC submits tariff filing per 35.17(b): Additional Information in Response to February 22, 2011 Letter Order to be effective 3/11/2011
Filed Date: 03/25/2011
Accession Number: 20110325–5049
Comment Date: 5 p.m. Eastern Time on Friday, April 15, 2011

Docket Numbers: ER11–2997–001
Applicants: Vectren Retail, LLC
Description: Vectren Retail, LLC submits tariff filing per 35: Vectren Retail d/b/a Vectren Source, Supplement to Initial MBR Application to be effective 4/29/2011.
Filed Date: 03/25/2011
Accession Number: 20110325–5085
Comment Date: 5 p.m. Eastern Time on Friday, April 15, 2011

Docket Numbers: ER11–3149–001
Applicants: California Independent System Operator Corporation
Description: California Independent System Operator Corporation submits tariff filing per 35.17(b): 2011–03–25 CAISO Errata to March 18, 2011 Tariff Amendment to be effective 3/22/2011.
Filed Date: 03/25/2011
Accession Number: 20110325–5128
Comment Date: 5 p.m. Eastern Time on Monday, April 04, 2011

Docket Numbers: ER11–3185–000
Applicants: Pacific Gas and Electric Company
Description: Pacific Gas and Electric Company submits tariff filing per 35.13(a)(2)(iii): Huron Solar Station WDT)SGIA to be effective 3/24/2011.
Filed Date: 03/24/2011
Accession Number: 20110324–5003
Comment Date: 5 p.m. Eastern Time on Thursday, April 14, 2011

Docket Numbers: ER11–3186–000
Applicants: Southern California Telephone Company
Description: Southern California Telephone Company submits tariff filing per 35.12: Application for Market-Based Rate Authority to be effective 5/23/2011.
Filed Date: 03/24/2011
Accession Number: 20110324–5036
Comment Date: 5 p.m. Eastern Time on Thursday, April 14, 2011

Docket Numbers: ER11–3187–000
Applicants: SBR Energy, LLC
Description: SBR Energy, LLC submits tariff filing per 35.12: Baseline New Tariff Filing to be effective 5/1/2011.
Filed Date: 03/24/2011
Accession Number: 20110324–5046
Comment Date: 5 p.m. Eastern Time on Thursday, April 14, 2011

Docket Numbers: ER11–3188–000
Applicants: Stream Energy Maryland, LLC
Description: Stream Energy Maryland, LLC submits tariff filing per 35.12: Market-Based Rate Application for Stream Energy Maryland, LLC to be effective 3/24/2011.
Filed Date: 03/24/2011
Accession Number: 20110324–5050
Comment Date: 5 p.m. Eastern Time on Thursday, April 14, 2011

Docket Numbers: ER11–3189–000
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii): Midwest ISO–SPP JOA to be effective 3/25/2011.
Filed Date: 03/24/2011
Accession Number: 20110324–5061
Comment Date: 5 p.m. Eastern Time on Thursday, April 14, 2011

Docket Numbers: ER11–3190–000
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc. submits tariff filing per 35.1: Filing of Tariff Record and Certificate of Concurrence for Midwest ISO–SPP JOA to be effective 3/25/2011.
Filed Date: 03/24/2011
Accession Number: 20110324–5079
Comment Date: 5 p.m. Eastern Time on Thursday, April 14, 2011

Docket Numbers: ER11–3191–000
Applicants: SJH Energy, LLC
Description: SJH Energy, LLC submits tariff filing per 35.1: SJH Energy FERC Electric Tariff to be effective 3/24/2011.
Filed Date: 03/24/2011
Accession Number: 20110324–5127
Comment Date: 5 p.m. Eastern Time on Thursday, April 14, 2011

Docket Numbers: ER11–3192–000
Applicants: The Dayton Power and Light Company
Description: The Dayton Power and Light Company submits tariff filing per 35.37: FERC Electric Tariff, Volume No. 10 to be effective 3/26/2011.
Filed Date: 03/25/2011
Accession Number: 20110325–5027
Comment Date: 5 p.m. Eastern Time on Friday, April 15, 2011

Docket Numbers: ER11–3193–000
Applicants: The Dayton Power and Light Company
Description: The Dayton Power and Light Company submits tariff filing per 35.37: FERC Electric Tariff, Volume No. 6 to be effective 3/26/2011.
Filed Date: 03/25/2011
Accession Number: 20110325–5046
Comment Date: 5 p.m. Eastern Time on Friday, April 15, 2011

Docket Numbers: ER11–3194–000
Applicants: DPL Energy, LLC.
Description: DPL Energy, LLC. submits tariff filing per 35.37: FERC Rate Schedule No. 1 to be effective 3/26/2011.
Filed Date: 03/25/2011
Accession Number: 20110325–5058
Comment Date: 5 p.m. Eastern Time on Friday, April 15, 2011

Docket Numbers: ER11–3195–000
Applicants: New Hampshire Industries, Inc.
Description: New Hampshire Industries, Inc. submits tariff filing per 35.1: New Hampshire Industries FERC Electric Tariff to be effective 3/25/2011.
Filed Date: 03/25/2011
Accession Number: 20110325–5059
Comment Date: 5 p.m. Eastern Time on Friday, April 15, 2011

Docket Numbers: ER11–3196–000
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii): Original Service Agreement Nos. 2795 and 2796 to be effective 2/24/2011.
Filed Date: 03/25/2011
Accession Number: 20110325–5061
Comment Date: 5 p.m. Eastern Time on Friday, April 15, 2011

Docket Numbers: ER11–3197–000
Applicants: Luminescent Systems, Inc.
Description: Luminescent Systems, Inc. submits tariff filing per 35.1: Luminescent Systems FERC Electric Tariff to be effective 3/25/2011.
Filed Date: 03/25/2011
Accession Number: 20110325–5099
Comment Date: 5 p.m. Eastern Time on Friday, April 15, 2011

Docket Numbers: ER11–3198–000

Applicants: Southern California Edison Company

Description: Southern California Edison Company submits tariff filing per 35.13(a)(2)(iii): Addition of 4 transmission projects to CWIP Rate Making Mechanism to be effective 4/1/2011.

Filed Date: 03/25/2011

Accession Number: 20110325–5129

Comment Date: 5 p.m. Eastern Time on Friday, April 15, 2011

Docket Numbers: ER11–3199–000

Applicants: PalletOne Energy, LLC

Description: PalletOne Energy, LLC submits tariff filing per 35.1: PalletOne Energy FERC Electric Tariff to be effective 3/25/2011.

Filed Date: 03/25/2011

Accession Number: 20110325–5146

Comment Date: 5 p.m. Eastern Time on Friday, April 15, 2011

Take notice that the Commission received the following foreign utility company status *filings:*

Docket Numbers: FC11–5–000

Applicants: Ghost Pine Windfarm, LP

Description: Ghost Pine Windfarm, LP Notification of Self-Certification of Foreign Utility Company Status.

Filed Date: 03/25/2011

Accession Number: 20110325–5091

Comment Date: 5 p.m. Eastern Time on Friday, April 15, 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.

As it relates to any qualifying facility filings, the notices of self-certification [or self-recertification] listed above, do not institute a proceeding regarding qualifying facility status. A notice of self-certification [or self-recertification] simply provides notification that the entity making the filing has determined the facility named in the notice meets the applicable criteria to be a qualifying facility. Intervention and/or protest do not lie in dockets that are qualifying facility self-certifications or self-recertifications. Any person seeking to challenge such qualifying facility status may do so by filing a motion pursuant to 18 CFR 292.207(d)(iii). Intervention and protests may be filed in response to notices of qualifying facility dockets other than self-certifications and self-recertifications.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed 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: March 29, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–7852 Filed 4–1–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1982–001; ER10–1253–001; ER10–1246–001; ER10–1252–001.

Applicants: Consolidated Edison Solutions, Inc., Consolidated Edison Energy, Inc., Consolidated Edison Company of New York, Orange and Rockland Utilities, Inc.

Description: Supplemental Information of Orange & Rockland Utilities, Inc., et. al.

Filed Date: 03/28/2011.

Accession Number: 20110328–5083.

Comment Date: 5 p.m. Eastern Time on Thursday, April 7, 2011.

Docket Numbers: ER10–2536–002.

Applicants: Westar Energy, Inc.

Description: Westar Energy, Inc. submits tariff filing per 35.17(b): Response to Deficiency Letter City of McPherson BPU to be effective 1/1/2010.

Filed Date: 03/28/2011.

Accession Number: 20110328–5119.

Comment Date: 5 p.m. Eastern Time on Monday, April 18, 2011.

Docket Numbers: ER11–3200–000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii:) ATSI Zone NITSAs—Service Agreements 2776, 2777, 2778, 2779, 2805 & 2806 to be effective 6/1/2011.

Filed Date: 03/28/2011.

Accession Number: 20110328–5109.

Comment Date: 5 p.m. Eastern Time on Monday, April 18, 2011.

Docket Numbers: ER11–3201–000.

Applicants: Entergy Arkansas, Inc.

Description: Entergy Arkansas, Inc. submits tariff filing per 35: Attachment H & Schedule 7 Compliance Filing—Docket No. ER10–984 to be effective 7/9/2010.

Filed Date: 03/28/2011.

Accession Number: 20110328–5115.

Comment Date: 5 p.m. Eastern Time on Monday, April 18, 2011.

Docket Numbers: ER11–3202–000.

Applicants: WFM Intermediary New England, LLC.

Description: WFM Intermediary New England, LLC submits tariff filing per 35.1: WFM Intermediary NE FERC Electric Tariff to be effective 3/28/2011.

Filed Date: 03/28/2011.

Accession Number: 20110328–5125.

Comment Date: 5 p.m. Eastern Time on Monday, April 18, 2011.

Take notice that the Commission received the following land acquisition reports:

Docket Numbers: LA10–3–000.

Applicants: CalPeak Power LLC, CalPeak Power—Panoche LLC, CalPeak Power—Vaca Dixon, LLC, CalPeak Power—El Cajon LLC, CalPeak Power—Enterprise LLC, CalPeak Power—Border LLC, Tyr Energy, LLC, Commonwealth Chesapeake Company, LLC, Fox Energy Company, LLC, Kansas Energy LLC.

Description: Quarterly Land Acquisition Report of CalPeak Power LLC.

Filed Date: 03/24/2011.

Accession Number: 20110324–5028.

Comment Date: 5 p.m. Eastern Time on Thursday, April 14, 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.

As it relates to any qualifying facility filings, the notices of self-certification [or self-recertification] listed above, do not institute a proceeding regarding qualifying facility status. A notice of self-certification [or self-recertification] simply provides notification that the entity making the filing has determined the facility named in the notice meets the applicable criteria to be a qualifying facility. Intervention and/or protest do not lie in dockets that are qualifying facility self-certifications or self-recertifications. Any person seeking to challenge such qualifying facility status may do so by filing a motion pursuant to 18 CFR 292.207(d)(iii). Intervention and protests may be filed in response to notices of qualifying facility dockets other than self-certifications and self-recertifications.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed 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: March 28, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–7851 Filed 4–1–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice Announcing Filing Priority for Preliminary Permit Applications

	Project No.
Lock+ Hydro Friends Fund XLII	13739–000
FFP Missouri 10, LLC	13751–000
Solia 7 Hydroelectric, LLC	13778–000

On March 24, 2011, the Commission held a drawing to determine priority among competing preliminary permit applications with identical filing times. In the event that the Commission concludes that none of the applicants' plans are better adapted than the others to develop, conserve, and utilize in the public interest the water resources of the region at issue, the priority established by this drawing will serve as the tiebreaker. Based on the drawing, the order of priority is as follows:

	Project No.
1. Lock+ Hydro Friends Fund XLII	13739–000
2. FFP Missouri 10, LLC	13751–000
3. Solia 7 Hydroelectric, LLC	13778–000

Dated: March 25, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–7860 Filed 4–1–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice Announcing Filing Priority for Preliminary Permit Applications

	Project No.
Lock+ Hydro Friends Fund XXXIV	13742–000
FFP Missouri 5, LLC	13757–000
Solia 2 Hydroelectric, LLC	13764–000

On March 24, 2011, the Commission held a drawing to determine priority among competing preliminary permit applications with identical filing times. In the event that the Commission concludes that none of the applicants' plans are better adapted than the others to develop, conserve, and utilize in the public interest the water resources of the region at issue, the priority established by this drawing will serve as the tiebreaker. Based on the drawing, the order of priority is as follows:

	Project No.
1. FFP Missouri 5, LLC	13757–000
2. Solia 2 Hydroelectric, LLC	13764–000
3. Lock+ Hydro Friends Fund XXXIV	13742–000

Dated: March 25, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–7858 Filed 4–1–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice Announcing Filing Priority for Preliminary Permit Applications

	Project No.
Lock+ Hydro Friends Fund XXXVIII	13744–000
FFP Missouri 12, LLC	13755–000
Allegheny 2 Hydro, LLC	13774–000
Three Rivers Hydro LLC	13780–000

On March 24, 2011, the Commission held a drawing to determine priority among competing preliminary permit applications with identical filing times. In the event that the Commission concludes that none of the applicants' plans are better adapted than the others to develop, conserve, and utilize in the public interest the water resources of the region at issue, the priority established by this drawing will serve as

the tiebreaker. Based on the drawing, the order of priority is as follows:

	Project No.
1. FFP Missouri 12, LLC	13755–000
2. Three Rivers Hydro LLC	13780–000
3. Allegheny 2 Hydro, LLC	13774–000
4. Lock+ Hydro Friends Fund XXXVIII	13744–000

Dated: March 25, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–7856 Filed 4–1–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice Announcing Filing Priority for Preliminary Permit Applications

	Project No.
Lock+ Hydro Friends Fund XXXVI	13733–000
FFP Missouri 8, LLC	13752–000
Solia 6 Hydroelectric, LLC	13768–000

On March 24, 2011, the Commission held a drawing to determine priority among competing preliminary permit applications with identical filing times. In the event that the Commission concludes that none of the applicants' plans are better adapted than the others to develop, conserve, and utilize in the public interest the water resources of the region at issue, the priority established by this drawing will serve as the tiebreaker. Based on the drawing, the order of priority is as follows:

	Project No.
1. Solia 6 Hydroelectric, LLC	13768–000
2. FFP Missouri 8, LLC	13752–000
3. Lock+ Hydro Friends Fund XXXVI	13733–000

Dated: March 25, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–7855 Filed 4–1–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice Announcing Filing Priority for Preliminary Permit Applications

	Project No.
Lock+ Hydro Friends Fund XLVI	13734–000
FFP Missouri 17, LLC	3754–000
Solia 3 Hydroelectric, LLC	13765–000
Three Rivers Hydro LLC	13783–000

On March 24, 2011, the Commission held a drawing to determine priority among competing preliminary permit applications with identical filing times. In the event that the Commission concludes that none of the applicants' plans are better adapted than the others to develop, conserve, and utilize in the public interest the water resources of the region at issue, the priority established by this drawing will serve as the tiebreaker. Based on the drawing, the order of priority is as follows:

	Project No.
1. Lock+ Hydro Friends Fund XLVI	13734–000
2. Three Rivers Hydro LLC	13783–000
3. Solia 3 Hydroelectric, LLC	13765–000
4. FFP Missouri 17, LLC	13754–000

Dated: March 25, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–7854 Filed 4–1–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice Announcing Filing Priority for Preliminary Permit Applications

	Project No.
Lock+ Hydro Friends Fund XLIV	13737–000
FFP Missouri 11, LLC	13759–000
Solia 5 Hydroelectric, LLC	13766–000

On March 24, 2011, the Commission held a drawing to determine priority among competing preliminary permit applications with identical filing times. In the event that the Commission concludes that none of the applicants' plans are better adapted than the others to develop, conserve, and utilize in the public interest the water resources of the region at issue, the priority established by this drawing will serve as the tiebreaker. Based on the drawing, the order of priority is as follows:

	Project No.
1. Solia 5 Hydroelectric, LLC	13766–000
2. Lock+ Hydro Friends Fund XLIV	13737–000
3. FFP Missouri 11, LLC	13759–000

Dated: March 25, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–7853 Filed 4–1–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice Announcing Filing Priority for Preliminary Permit Applications

	Project No.
Lock+ Hydro Friends Fund XLV	13741–000
FFP Missouri 9, LLC	13748–000
Solia 8 Hydroelectric, LLC	13771–000

On March 24, 2011, the Commission held a drawing to determine priority among competing preliminary permit applications with identical filing times. In the event that the Commission concludes that none of the applicants' plans are better adapted than the others to develop, conserve, and utilize in the public interest the water resources of the region at issue, the priority established by this drawing will serve as the tiebreaker. Based on the drawing, the order of priority is as follows:

	Project No.
1. Solia 8 Hydroelectric, LLC	13771–000
2. Lock+ Hydro Friends Fund XLV	13741–000
3. FFP Missouri 9, LLC	13748–000

Dated: March 25, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–7859 Filed 4–1–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice Announcing Filing Priority for Preliminary Permit Applications

	Project No.
Lock+ Hydro Friends Fund XLVII	13743–000
FFP Missouri 16, LLC	13753–000
Solia 7 Hydroelectric, LLC	13769–000
Three Rivers Hydro LLC	13785–000

On March 24, 2011, the Commission held a drawing to determine priority among competing preliminary permit applications with identical filing times. In the event that the Commission concludes that none of the applicants' plans are better adapted than the others to develop, conserve, and utilize in the public interest the water resources of the region at issue, the priority established by this drawing will serve as the tiebreaker. Based on the drawing, the order of priority is as follows:

	Project No.
1. FFP Missouri 16, LLC	13753–000
2. Lock+ Hydro Friends Fund XLVII	13743–000
3. Solia 7 Hydroelectric, LLC	13769–000
4. Three Rivers Hydro LLC	13785–000

Dated: March 25, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–7857 Filed 4–1–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice Announcing Filing Priority for Preliminary Permit Applications

	Project No.
Lock+ Hydro Friends Fund XXXVII	13738–000
FFP Missouri 6, LLC	13761-000
Solia 1 Hydroelectric, LLC	13770–000

On March 24, 2011, the Commission held a drawing to determine priority among competing preliminary permit applications with identical filing times. In the event that the Commission concludes that none of the applicants' plans are better adapted than the others to develop, conserve, and utilize in the public interest the water resources of the region at issue, the priority established by this drawing will serve as the tiebreaker. Based on the drawing, the order of priority is as follows:

	Project No.
1. FFP Missouri 6, LLC	13761-000
2. Lock+ Hydro Friends Fund XXXVII	13738-000
3. Solia 1 Hydroelectric, LLC	13770–000

Dated: March 25, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–7850 Filed 4–1–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2524–018—Oklahoma]

Grand River Dam Authority, Salina Pumped Storage Project; Notice of Proposed Restricted Service List for a Programmatic Agreement for Managing Properties Included in or Eligible for Inclusion in the National Register of Historic Places

Rule 2010 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.2010, provides that, to eliminate unnecessary expense or improve administrative efficiency, the Secretary may establish a restricted service list for a particular phase or issue in a proceeding. The restricted service list should contain the names of persons on the service list who, in the judgment of the decisional authority establishing the list, are active participants with respect to the phase or issue in the proceeding for which the list is established.

The Commission staff is consulting with the Oklahoma Historical Society (Oklahoma SHPO) and the Advisory Council on Historic Preservation (Advisory Council) pursuant to the Advisory Council's regulations, 36 CFR part 800, implementing section 106 of the National Historic Preservation Act, *as amended,* (16 U.S.C. 470f), to prepare a Programmatic Agreement for managing properties included in, or eligible for inclusion in, the National Register of Historic Places at the existing Salina Pumped Storage Project, located on the Saline Creek arm of Lake Hudson in Mayes County, Oklahoma.

The Programmatic Agreement, when executed by the Commission, the Oklahoma SHPO, and the Advisory Council, would satisfy the Commission's section 106 responsibilities for all individual undertakings carried out in accordance with the license until the license expires or is terminated (36 CFR 800.13[e]). The Commission's responsibilities pursuant to section 106 for the project would be fulfilled through the Programmatic Agreement, which the Commission staff proposes to draft in consultation with certain parties listed below.

Grand River Dam Authority, as licensee for Project No. 2524–018, is invited to participate in consultations to develop the Programmatic Agreement and to sign as a concurring party to the Programmatic Agreement. For purposes of commenting on the Programmatic Agreement, we propose to restrict the service list for Project No. 2524–018 as follows:

John Fowler, Executive Director, Advisory Council on Historic Preservation, The Old Post Office Building, Suite 803, 1100 Pennsylvania Avenue, NW., Washington, DC 20004.

Melvena Heisch, Deputy SHPO, Oklahoma Historical Society, 800 Nazih Zuhdi Drive, Oklahoma, OK 73105–7917.

Dr. Robert Brooks, State Archaeologist, Oklahoma Archeological Survey, 111 E. Chesapeake Street, Norman, OK 73019.

Dr. Darrell E. Townsend II, Grand River Dam Authority, P.O. Box 70, Langley, OK 74350–0070.

Charles Atkins, Grand River Dam Authority, P.O. Box 70, Langley, OK 74350–0070.

Dr. Timothy G. Baugh, Historical, Archaeologist, Oklahoma Historical Society, 800 Nazih Zuhdi Drive, Oklahoma, OK 73105–7917.

Frank Hecksher, Peoria Tribe of Oklahoma, 118 S. Eight Tribes Trail, Miami, OK 74354.

Ted Isham, Emman Spain, Muscogee (Creek) Nation, P.O. Box 580, Okmulgee, OK 74447.

James Munkres, Osage Nation, 627 Grandview, Pawhuska, OK 74056.

George Strack, THPO, Miami Tribe of Oklahoma, P.O. Box 1326, Miami, OK 74355.

Jodi Hayes, Shawnee Tribe, P.O. Box 189, Miami, OK 74355.

Charles Coleman, Thlopthlocco Tribal Town, P.O. Box 188, Okemah, OK 74859–0188.

Any person on the official service list for the above-captioned proceedings may request inclusion on the restricted service list, or may request that a restricted service list not be established, by filing a motion to that effect within 15 days of this notice date. An original plus seven copies of any such motion must be filed with the Secretary of the Commission (888 First Street, NE., Washington, DC 20426) and must be served on each person whose name appears on the official service list. If no such motions are filed, the restricted service list will be effective at the end of the 15 day period. Otherwise, a further notice will be issued ruling on the motion.

Dated: March 28, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–7778 Filed 4–1–11; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9289–4]

Clean Water Act Section 303(d): Final Agency Action on Three Total Maximum Daily Loads (TMDLs) in Louisiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces final agency action on three TMDLs prepared by EPA Region 6 for waters listed in Louisiana's Mississippi River Basin, under Section 303(d) of the Clean Water Act (CWA). Documents from the administrative record file for the three TMDLs, including TMDL calculations and responses to comments, may be viewed at *http://www.epa.gov/region6/water/npdes/tmdl/index.htm.* The administrative record file may be examined by calling or writing Ms. Diane Smith at the address below. Please contact Ms. Smith to schedule an inspection.

FOR FURTHER INFORMATION CONTACT: Diane Smith, Environmental Protection Specialist, Water Quality Protection Division, U.S. EPA Region 6, 1445 Ross Avenue, Dallas, TX 75202–2733, (214) 665–2145.

SUPPLEMENTARY INFORMATION: In 1996, two Louisiana environmental groups, the Sierra Club and Louisiana Environmental Action Network (plaintiffs), filed a lawsuit in Federal Court against the EPA, styled *Sierra Club, et al.* v. *Clifford et al.,* No. 96–0527, (E.D. La.). Among other claims, plaintiffs alleged that EPA failed to establish Louisiana TMDLs in a timely manner. EPA established three of these TMDLs pursuant to a consent decree entered in this lawsuit.

EPA Takes Final Agency Action on Three TMDLs

By this notice EPA is taking final agency action on the following three TMDLs on waters located within the Louisiana Mississippi River Basin:

Subsegment	Waterbody name	Pollutant
070401	Mississippi River Passes (estuarine)	Fecal Coliform.
070502	Thompson Creek	Fecal Coliform.
070503	Capitol Lake	Fecal Coliform.

EPA requested the public provide to EPA any significant water quality related data or information that might impact the three TMDLs in the **Federal Register** Notice: volume 75, number 37, page 8698 (February 25, 2010). The comments which were received, EPA's response to comments, as well as the TMDLs may be found at *http://www.epa.gov/region6/water/npdes/tmdl/index.htm.*

Dated: March 28, 2011.

Miguel I. Flores,

Director, Water Quality Protection Division, EPA Region 6.

[FR Doc. 2011–7906 Filed 4–1–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9289–5]

North Carolina Waters Along the Entire Length of Brunswick and Pender Counties and the Lower Portion of the Cape Fear River in Brunswick and New Hanover Counties; No Discharge Zone Determination

On June 21, 2010, the Environmental Protection Agency (EPA), Region 4, published a proposal in concurrence with the North Carolina Department of Environment and Natural Resources (DENR), Division of Water Quality (DWQ), that adequate and reasonably available pumpout facilities exist for the designation of Brunswick and Pender Counties Coastal Waters and a portion of the Cape Fear River, as a No Discharge Zone (NDZ). Specifically, these waters include all the tidal salt waters extending 3 nautical miles (nm) into the Atlantic Ocean along the entire length of Brunswick and Pender Counties, and the saline waters of the Cape Fear River in Brunswick and New Hanover Counties. The other saline waters of New Hanover County have already been designated as a NDZ.

The originally proposed geographic description including latitudes and longitudes were as follows:

Northern Border of Pender County with Onslow County (34° 27′23.9″ N 77° 32.4′.859″ W), southwest along the mainland coast, to include all named and unnamed creeks, the Atlantic Intracoastal Waterway, Cape Fear River (up to Toomers Creek 34° 15′36.61″ N 77° 58′56.03″ W), Brunswick River, and Northeast Cape Fear River (up to Ness Creek 34° 17′7.10″ N 77° 57′17.70″ W), to the intersection of the Western tip of Brunswick County and South Carolina, 3 nm into the Atlantic Ocean (33° 48′32.903″ N 78° 30′33.675″ W) to include all the U.S. Territorial Sea extending 3 nm from South Carolina to a point 3 nm into the Atlantic Ocean (34° 24′30.972″ N 78° 28′18.903″ W) to the Pender/Onslow County Line.

Three comment letters opposing this designation were received. These letters were from Cruise Lines International Association, Moran of Wilmington (Division of Moran Towing Corporation), and McAllister Towing and Transportation Company. The reason for the opposition is that there are not adequate and reasonably available pumpout facilities available for these commercial vessels which have deeper drafts than most recreational vessels. These are valid concerns. The State explored the comments and options, and confirmed that pumpout facilities are not available in the upper Cape Fear River specifically for the tugboats that operate in those waters and hereby amend the proposal to remove the Cape Fear River, above the waterway known as Snow's Cut, from the NDZ area. The lower Cape Fear River is still proposed for NDZ. The inland limit of the NDZ in the Cape Fear River will be the waterway known as Snow's Cut (A line drawn across the Cape Fear River at Snows Cut on the Cape Fear River at Snows Cut on the Cape Fear River from 34°3′5.8962″ N; 77°55′4.8966″ W to 34°3′4.5216″ N 77°56′37.086″ W).

This petition was filed pursuant to the Clean Water Act, Section 312(f)(3), Public Law 92–500 as amended by Public Law 95–217 and Public Law 100–4. A NDZ is defined as a body of water in which the discharge of vessel sewage, both treated and untreated, is prohibited. Section 312(f)(3) states: After the effective date of the initial standards and regulations promulgated under this section, if any State determines that the protection and

enhancement of the quality of some or all of the waters within such States require greater environmental protection, such State may completely prohibit the discharge from all vessels of any sewage, whether treated or not, into such waters, except that no such prohibition shall apply until the Administrator determines that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for such water to which such prohibition would apply.

According to DENR DWQ the following facilities are located in Brunswick, Pender, and New Hanover Counties for pumping out vessel holding tanks:

Marinas Within the Proposed NDZ

(1) St James Plantation Marina, 910–253–0463, 8 a.m.–5 p.m. M–F, 7′ draft at mean low tide.

(2) South Harbor Village Marina, 910–454–7486, 7 a.m.–7 p.m. Summers, varies off season, 10′15′ draft at mean low tide.

(3) Southport Marina Inc., 910–457–9900, Sunrise to Sunset, 6′ draft at mean low tide.

(4) Bald Head Island Marina, 910–457–7380, 9 a.m.–5 p.m. M–F 9 a.m.–6 p.m. Saturday 8 a.m.–6 p.m. Sunday, 8′ draft at mean low tide.

(5) Mona Black Marina, 910–458–0575, Flexible—open year round, 4′ draft at mean low tide.

(6) Waterfront Village & Yacht Club, 910–458–7400, Call ahead, 5.5′ draft at mean low tide.

(7) Carolina Beach State Park, 910–458–7770, May–August 8 a.m.–5 p.m. March, April, September, October 8 a.m.–7 p.m., 8′ draft at mean low tide.

(8) Joyner Marina, 910–458–5053, Winter and Weekdays 8 a.m.–5 p.m. Summer and Weekends 7 a.m.–7 p.m., 5.5′ draft at mean low tide.

(9) Wrightsville Beach Marina/Trans Dock, 910–256–6666, 8 a.m.–7:30 p.m. Monday–Friday, 13′–18′ draft at mean low tide.

(10) Seapath Yacht Club, 910–256–3747, 7 a.m.–7 p.m., 10′–12′ draft at mean low tide.

(11) Harbour Village Marina, 910–270–2994, 7 a.m.–4 p.m., 10′ draft at mean low tide.

(12) Beach House Marina, 910–328–2628, 8 a.m.–6 p.m., 7.5′ draft at mean low tide.

Marinas Outside of the Proposed NDZ, but Within 5 nm

(1) Coquina Harbor Marina, 843–249–5376, 8 a.m.–6 p.m., 9′–13′ draft at mean low tide.

(2) Cricket Cove Marina, 843–249–7169, 8 a.m.–Sunset, 9′ draft at mean low tide.

(3) Anchor Marina, 843–249–7899, 8 a.m.–5 p.m., 5′ draft at mean low tide.

(4) Doc Holidays Marina, 843–280–6354, 8 a.m.–6 or 8 p.m. depending on season, 8′ draft at mean low tide.

Marinas Outside of the Proposed NDZ, but Within 7 nm

(1) Watermark Marina of Wilmington, 910–794–5259, 10 a.m.–6 p.m. Monday–Saturday, 7′ draft at mean low tide.

(2) Wilmington Marine Center, 910–395–5055, 8 a.m.–5 p.m. Seasonal, 7′ draft at mean low tide.

Marinas Outside of the Proposed NDZ, but Within 12 nm

(1) Cape Fear Marina, 910–772–9277, 8 a.m.–5 p.m. Monday–Friday Weekends by appointment only, 8′ draft at mean low tide.

The total vessel population for these three counties (2009 data) is 28,400. This number reflects active vessel registrations and was obtained from the North Carolina Wildlife Resources Commission (inactive registrations were not included in these figures). It is recognized that only a small percent of the vessels in the coastal waters of Brunswick and Pender Counties are equipped with a Marine Sanitation Device (MSD). To estimate the number of MSDs in use, percentages obtained from EPA Region 2 were applied and are as follows:

Boat Length < 16′	8.3% with MSDs.
Boat Length 16′–25′ ..	10.6% with MSDs.
Boat Length 26′–40′ ..	78.5% with MSDs.
Boat Length > 40′	82.6% with MSDs.

In applying these percentages an estimated 3,888 MSDs are in use by registered boats within the proposed NDZ.

According to the New Hanover County NDZ Application submitted to EPA, the number of transient boats serviced by marinas in New Hanover County was calculated to be approximately 180 per month. Assuming similar numbers of transient boats for Brunswick and Pender Counties, the total number of transient boats for Brunswick, Pender, and New Hanover Counties would be 540. Using the figures for both county and transient boats, the total number of MSDs in these waters is estimated to be 4,428. There are 12 marinas within this area, and this yields a ratio of about 369 boats per pumpout facility. This figure does not include the 4 marinas that are located within 5 nm of this proposed NDZ area.

All vessel pumpout facilities that are described either discharge into State approved waste treatment systems, or the waste is collected into a large holding tank for transport to a sewage treatment plant. Thus all vessel sewage will be treated to meet existing standards for secondary treatment.

Based on the examination of this petition, its supporting documentation, and public response, EPA concurs with the State of North Carolina's determination that adequate and reasonably available facilities for the safe and sanitary removal and treatment of sewage from all vessels are present in the described area going from the South Carolina/North Carolina State line to the northern boundary of the Pender County line in North Carolina, with the inland limit of the NDZ in the Cape Fear River being the waterway known as Snow's Cut (Snow's Cut entrance to Cape Fear River located from 34°3′5.8962″ N; 77°55′4.8966″ W to 34°3′4.5216″ N 77°56′37.086″ W), and 3 nm out into the Atlantic Ocean, and therefore this area is designated as a NDZ.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 2011–7902 Filed 4–1–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9289–3]

Casmalia Disposal Site; Notice of Proposed CERCLA Administrative De Minimis Settlement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (CERCLA) and section 7003 of the Resource Conservation and Recovery Act (RCRA), EPA is hereby providing notice of a proposed administrative *de minimis* settlement concerning the Casmalia Disposal Site in Santa Barbara County, California (the Casmalia Disposal Site). Section 122(g) of CERCLA provides EPA with the authority to enter into administrative *de minimis* settlements. This settlement is intended to resolve the liabilities of 49 settling parties for the Casmalia Disposal Site under sections 106 and 107 of CERCLA and section 7003 of RCRA. These parties are identified below. These parties have also elected to resolve their liability for response costs and potential natural resource

damage claims by the United States Fish and Wildlife Service (USFWS) and the National Oceanic and Atmospheric Administration (NOAA). These 49 parties sent 13,311,191 lbs. of waste to the Casmalia Disposal Site, which represents 0.002 (0.2%) of the total Site waste of 5.6 billion pounds. This settlement requires these parties to pay over $1.2 million to EPA.

Settling Parties: Parties that have elected to settle their liability with EPA at this time are as follows:

All Metal Processing of Orange County; Allen Foam Corporation; American Pharmaseal Labs; Amex Systems, Inc; Associated Plating Company, Inc.; AT&T Communication, Inc., other subsidiaries of AT&T, Inc., and Alcatel-Lucent USA Inc. as successor in interest to the claims asserted against Western Electric Company, Inc. and AT&T Technologies, Inc; Avery Dennison Corporation; B/E Aerospace; BAE Systems Information and Electronic Systems Integration Inc.; Cenveo; ConAgra Foods, Inc.; Continental Chemical Co.; Cosden Oil & Chemical Company; Del Mar Development Company, Inc.; Fortin Industries, Inc.; Four Seasons Hotels and Resorts; Fremont Union High School District; Garratt-Callahan Company; Gearhart Industries; General Tire Service; Hercules, Incorporated for itself, Mica Corporation and US Filter; Hobie Cat (f/k/a Coast Catamaran Corp); Inland Kenworth, Inc.; Ken Dale; L–3 Communication Corporation; Life Technologies Corporation; Macy's Inc; Manhattan Beach Holding Corp. on its own behalf and on behalf of Fairchild Industries, Inc. and its successors, and on behalf of Fairchild Controls Corporation, Matra Aerospace, Inc., EADS North America, Inc., and EADS North America; MarBorg Industries; Maxwell Technologies, Inc.; Memorex Telex Corporation/Unisys; Mountain High Ski Resort; Newell Rubbermaid, Inc.; Nowsco Services, Inc.; Orange County Plating Co., Inc.; Parker Hannifin Corporation, successor-in-interest to Racor Industries, Inc, by merger; Rainbow Disposal; Roberts Holdings, LLC; SoilServ; State Industries; Sunkist Growers, Inc.; Texas Eastern Corporation; The Hon Company; The Sherwin-Williams Company; Ultrasystems Inc. by and through its legal successor-in-interest, LG&E Power Inc.; Univar USA, Inc.; Valley Nissan Volvo, Inc.; Verbatim Corporation; Weyerhaeuser NR Company as successor to Western Kraft (f/k/a Willamette Industries).

DATES: EPA will receive written comments relating to the settlement until May 4, 2011. EPA will consider all comments it receives during this period, and may modify or withdraw consent to the settlement if any comments disclose facts or considerations indicating that the settlement is inappropriate, improper, or inadequate.

Public Meeting: In accordance with section 7003(d) of RCRA, 42 U.S.C. 6973(d), commenters may request an opportunity for a public meeting in the affected area. The deadline for requesting a public meeting is April 18, 2011. Requests for a public meeting may be made by contacting Karen Goldberg by e-mail at *goldberg.karen@epa.gov,* or by facsimile at (415) 947–3570. If a public meeting is requested, information about the date and time of the meeting will be published in the local newspaper, *The Santa Maria Times,* and will be sent to persons on the EPA's Casmalia Site mailing list. To be added to the mailing list, please contact:

Jackie Lane at (415) 972–3236 or by e-mail at *lane.jackie@epa.gov.* A copy of the settlement document may be obtained by calling (415) 369–0559 extension 10, and leaving a message with your name, phone number, and mailing address or e-mail address.

ADDRESSES: Written comments should be addressed to Karen Goldberg, U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street (mail code RC–3), San Francisco, California 94105–3901, or may be faxed to her at (415) 947–3570 or sent by e-mail to *goldberg.karen@epa.gov.*

FOR FURTHER INFORMATION CONTACT: Additional information about the Casmalia Disposal Site and about the proposed settlement may be obtained on the EPA-maintained Casmalia Web site at: *http://www.epa.gov/region09/casmalia* or by calling Karen Goldberg at (415) 972–3951.

Dated: March 21, 2011.

Jane Diamond,

Director, Superfund Division, Region IX.

[FR Doc. 2011–7904 Filed 4–1–11; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

March 28, 2011.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501–3520. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, and (e) ways to further reduce the information collection burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid 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 June 3, 2011. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202–395–5167 or via the Internet at *Nicholas_A._Fraser@omb.eop.gov* and to the Federal Communications Commission via e-mail to *PRA@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: 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: 3060–0065.

Title: Applications for New or Modified Radio Station Authorization Under Part 5 of FCC Rules—Experimental Radio Service (Other than Broadband).

Form No.: FCC Form 442.

Type of Review: Extension of a currently approved collection.

Respondents: Not-for-profit institutions and state, local or tribal government.

Number of Respondents and Responses: 200 respondents; 280 responses.

Estimated Time Per Response: 4 hours.

Frequency of Response: On occasion reporting requirement and recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 154, 302 and 303.

Total Annual Burden: 1,120 hours.

Total Annual Cost: $18,000.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: Applicants may request that any information supplied be withheld from public inspection pursuant to 47 CFR 0.459 of the Commission's rules. This request must be justified under 47 CFR 0.447 of the Commission's rules.

Needs and Uses: The Commission will submit this expiring collection to the Office of Management and Budget (OMB) after this comment period to obtain the three year clearance from them. There is no change in the Commission's burden hour estimate or annual cost estimate. The Commission is seeking OMB approval for an extension (no change in the reporting and/or recordkeeping requirements).

Part 5 allows for operations not covered under other FCC rule parts, such as research and development, testing prior to equipment authorization, and limited market studies of experimental services/products. Applicants are generally electronic equipment manufacturers. Applicants who apply for a FCC license to operate a new or modified experimental radio station are required to complete and file FCC Form 442.

The FCC will use the information to determine if the applicant is eligible for an experimental license, to comply with the requirements of Part 5 of the Commission's rules and if the proposed operation will cause interference to existing operations.

Federal Communications Commission.

Gloria Miles,

Federal Register Liaison,

Office of the Secretary,

Office of Managing Director.

[FR Doc. 2011–7909 Filed 4–1–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Determination of Insufficient Assets To Satisfy Claims Against Financial Institution in Receivership

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice.

SUMMARY: The FDIC has determined that insufficient assets exist in the receivership of United Commercial Bank, San Francisco, California, to make any distribution to general unsecured claims, and therefore such claims will recover nothing and have no value.

DATES: The FDIC made its determination on March 24, 2011.

FOR FURTHER INFORMATION CONTACT: If you have questions regarding this notice, you may contact an FDIC Claims Agent at (949) 208–6200. Written correspondence may also be mailed to FDIC as Receiver of United Commercial Bank, Attention: Claims Agent, 40 Pacifica, 8th Floor, Irvine, California 92618.

SUPPLEMENTARY INFORMATION: On November 6, 2009, United Commercial Bank, San Francisco, California, (FIN #10147) was closed by the California Department of Financial Institutions, and the Federal Deposit Insurance Corporation ("FDIC") was appointed as its receiver ("Receiver"). In complying with its statutory duty to resolve the institution in the method that is least costly to the deposit insurance fund, see 12 U.S.C. 1823(c)(4), the FDIC facilitated a transaction with East West Bank, Pasadena, California, to acquire the deposits and most of the assets of the failed institution.

Section 11(d)(11)(A) of the Federal Deposit Insurance Act, 12 U.S.C. 1821(d)(11)(A), sets forth the order of priority for distribution of amounts realized from the liquidation or other resolution of an insured depository institution to pay claims. Under the statutory order of priority, administrative expenses and deposit liabilities must be paid in full before any distribution may be made to general unsecured creditors or any lower priority claims.

As of December 31, 2010, the value of assets available for distribution by the Receiver, together with all expected recovery sources, including recoveries on claims against directors, officers, and other professionals, claims in bankruptcy, and refunds of Federal and State taxes, was $2,555,907,701. As of the same date, administrative expenses and depositor liabilities equaled $4,889,458,384, exceeding available assets by $2,333,550,683. Accordingly, the FDIC has determined that insufficient assets exist to make any distribution on general unsecured creditor claims (and any lower priority claims) and therefore all such claims, asserted or unasserted, will recover nothing and have no value.

Dated: March 29, 2011.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2011–7796 Filed 4–1–11; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Determination of Insufficient Assets To Satisfy Claims Against Financial Institution in Receivership

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice.

SUMMARY: The FDIC has determined that insufficient assets exist in the receivership of Miami Valley Bank, Lakeview, Ohio, to make any distribution to general unsecured claims, and therefore such claims will recover nothing and have no value.

DATES: The FDIC made its determination on March 28, 2011.

FOR FURTHER INFORMATION CONTACT: If you have questions regarding this notice, you may contact an FDIC Claims Agent at (972) 761–8677. Written correspondence may also be mailed to FDIC as Receiver of Miami Valley Bank, Attention: Claims Agent, 1601 Bryan Street, Dallas, Texas 75201.

SUPPLEMENTARY INFORMATION:

On October 4, 2007, Miami Valley Bank, Lakeview, Ohio, (FIN #10002) was closed by the Department of Financial Institutions for the State of Ohio, and the Federal Deposit Insurance Corporation ("FDIC") was appointed as its receiver ("Receiver"). In complying with its statutory duty to resolve the institution in the method that is least costly to the deposit insurance fund, *see* 12 U.S.C. 1823(c)(4)), the FDIC facilitated a transaction with The Citizens Banking Company, Sandusky, Ohio, to assume the insured deposits of the failed institution, while retaining the remaining assets of the bank for later disposition.

Section 11(d)(11)(A) of the Federal Deposit Insurance Act, 12 U.S.C. 1821(d)(11)(A), sets forth the order of priority for distribution of amounts realized from the liquidation or other resolution of an insured depository

institution to pay claims. Under the statutory order of priority, administrative expenses and deposit liabilities must be paid in full before any distribution may be made to general unsecured creditors or any lower priority claims.

As of December 31, 2010, the value of assets available for distribution by the Receiver, together with all expected recovery sources, was $14,671,702. As of the same date, administrative expenses and depositor liabilities equaled $41,374,312, exceeding available assets by at least $26,702,610. Accordingly, the FDIC has determined that insufficient assets exist to make any distribution on general unsecured creditor claims (and any lower priority claims) and therefore all such claims, asserted or unasserted, will recover nothing and have no value.

Dated: March 29, 2011.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2011–7797 Filed 4–1–11; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Update to Notice of Financial Institutions for Which the Federal Deposit Insurance Corporation Has Been Appointed Either Receiver, Liquidator, or Manager

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Update Listing of Financial Institutions in Liquidation.

SUMMARY: Notice is hereby given that the Federal Deposit Insurance Corporation (Corporation) has been appointed the sole receiver for the following financial institutions effective as of the Date Closed as indicated in the listing. This list (as updated from time to time in the **Federal Register**) may be relied upon as "of record" notice that the Corporation has been appointed receiver for purposes of the statement of policy published in the July 2, 1992 issue of the **Federal Register** (57 FR 29491). For further information concerning the identification of any institutions which have been placed in liquidation, please visit the Corporation Web site at *http://www.fdic.gov/bank/individual/failed/banklist.html* or contact the Manager of Receivership Oversight in the appropriate service center.

Dated: March 28, 2011.

Federal Deposit Insurance Corporation.

Pamela Johnson,

Regulatory Editing Specialist.

INSTITUTIONS IN LIQUIDATION

[In alphabetical order]

FDIC Ref. No.	Bank name	City	State	Date closed
10350	The Bank of Commerce	Wood Dale	IL	3/25/2011

[FR Doc. 2011–7800 Filed 4–1–11; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Notice

AGENCY: Federal Election Commission.

DATE AND TIME: Thursday, April 7, 2011 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

Items To Be Discussed

Correction and Approval of the Minutes for the Meeting of March 16, 2011.

Draft Advisory Opinion 2011–03: Democratic Senatorial Campaign Committee, National Republican Congressional Committee, Republican National Committee, Democratic Congressional Campaign Committee, and National Republican Senatorial Committee by Marc E. Elias, Esq., Jessica Furst, Esq., John Phillippe, Esq., Brian G. Svoboda, Esq., and Michael E. Toner, Esq.

Draft Advisory Opinion 2011–04: American Israel Public Affairs Committee by Philip Friedman, Esq.

Proposed Final Audit Report on Tennessee Democratic Party (A07–07).

Management and Administrative Matters.

Individuals who plan to attend and require special assistance, such as sign language interpretation or other reasonable accommodations, should contact Shawn Woodhead Werth, Commission Secretary and Clerk, at (202) 694–1040, at least 72 hours prior to the hearing date.

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Shawn Woodhead Werth,

Secretary and Clerk of the Commission.

[FR Doc. 2011–8068 Filed 3–31–11; 4:15 pm]

BILLING CODE 6715–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Seeking Public Comment on Two Draft Chapters of the National Health Security Strategy Biennial Implementation Plan

AGENCY: Department of Health and Human Services, Office of the Secretary.

ACTION: Notice.

SUMMARY: To help the Nation achieve national health security and to implement the first quadrennial *National Health Security Strategy (NHSS) of the United States of America* (2009) and build upon the *NHSS Interim Implementation Guide for the National Health Security Strategy of the United States of America* (2009) the U.S. Government has drafted a NHSS Biennial Implementation Plan (BIP). This document is intended to describe the priority activities to occur during fiscal years 2011 and 2012 of implementation so that all sectors and segments of the Nation are working collectively and leveraging resources to achieve the same outcomes. The activities include responsible entities. The target audience for the BIP is the Nation (individuals, families, communities including all sectors and governments, states and the Federal Government).

Two chapters (and respective appendices) of the draft BIP document which address (1) Strategic Objective 4, Foster Integrated, Scalable Health Care Delivery Systems; and (2) Strategic Objective 6, Promote and Effective Countermeasures Enterprise are submitted for public consideration and comment for a period of 14 calendar days at *http://www.phe.gov/nhss.* These chapters are the final two to be provided for public consideration and comment;

Authority: Public Health Service Act, 42 U.S.C. 300hh–1.

others were available in July 2010. The Office of the Assistant Secretary of Preparedness and Response (ASPR) within the Department of Health and Human Services (HHS) is submitting this document for public consideration as the lead agency in a broad interagency process to draft the implementation plan.

DATES: The public is encouraged to submit written comments on this proposed document. Comments may be submitted to HHS/ASPR in electronic form at the HHS/ASPR e-mail address and URL shown below. All comments should be submitted by April 18, 2011. All written comments received in response to this notice will be available for review by request. This document is available in hard-copy for all those that request it from the federal point of contact.

FOR FURTHER INFORMATION CONTACT: Lisa Kaplowitz, Deputy Assistant Secretary, Office of Policy and Planning, Office of the Assistant Secretary for Preparedness and Response, U.S. Department of Health and Human Services, 200 Independence Avenue, SW., Washington, DC 20201; phone: 202–205–2882; *http://www.phe.gov/nhss;* e-mail address: *nhss@hhs.gov.*

SUPPLEMENTARY INFORMATION:

The *National Health Security Strategy (2009)* can be found at: *http://www.phe.gov/Preparedness/planning/authority/nhss/Pages/default.aspx.*

Dated: March 28, 2011.

Nicole Lurie,

Assistant Secretary for Preparedness and Response.

[FR Doc. 2011–7881 Filed 4–1–11; 8:45 am]

BILLING CODE 4150–37–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30 Day–11–11BP]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Community-based Organization (CBO) Monitoring and Evaluation Project (CMEP) of Women Involved in Life Learning from Other Women (WILLOW)—New—National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention (NCHHSTP)

Background and Brief Description

CDC began formally partnering with CBOs in the late 1980s to expand the reach of HIV prevention efforts. CBOs were, and continue to be, recognized as important partners in HIV prevention because of their history and credibility with target populations and their access to groups that may not be easily reached. Over time, CDC's program for HIV prevention by CBOs has grown in size, scope, and complexity to respond to changes in the epidemic, including the diffusion and implementation of Effective Behavioral Interventions (EBIs) for HIV prevention. Women Involved in Life Learning from Other Women (WILLOW) is an EBI that focuses on health education and social skills building among women living with HIV.

CDC's EBIs have been shown to be effective under controlled research environments, but there is limited data on intervention implementation and client outcomes in real-world settings (as implemented by CDC-funded CBOs). The purpose of CMEP is to improve the performance of CDC-funded CBOs delivering particular individual- or group-level behavioral interventions. This is done by monitoring changes in clients' self-reported HIV transmission risk behaviors after participating in the intervention. CMEP also assesses the fidelity of the implementation of the selected intervention at the CBO. The project also plans to conduct process monitoring of the delivery of the intervention in terms of recruitment, retention, and data collection, entry, and management. Four CBOs will receive supplemental funding under PS 10–1003 over a five-year period to participate in CMEP–WILLOW.

From July 1, 2011 to June 30, 2015, CBOs will conduct outcome and process monitoring for this project. Each agency will recruit 400 women living with HIV who are 18 years of age and older, have known their positive HIV status for at least 6 months, and are enrolled in the WILLOW intervention to participate in CMEP–WILLOW. Each participant will complete a 20 minute, self administered, computer based interview prior to their participation in the WILLOW intervention and an 18 minute, self administered, computer based interview at two follow-up time points (90- and 180-days following the WILLOW intervention) to assess their HIV-related attitudes and behavioral risks. CBOs will be expected to retain 80% of these participants at both follow-up interviews.

Throughout the project, funded CBOs will be responsible for managing the daily procedures of CMEP–WILLOW to ensure that all required activities are performed, all deadlines are met, and quality assurance plans, policies and procedures are upheld. CBOs will be responsible for participating in all CDC-sponsored grantee meetings related to CMEP–WILLOW. The total estimated annual burden hours are 338.

ESTIMATED ANNUALIZED BURDEN HOURS

Respondent	Form	Number of respondents	Number of responses per respondent	Average burden response (in hours)
General population	Screener	400	1	2/60
General population	Baseline Interview	400	1	20/60
General population	90-Day Follow-Up Interview	320	1	18/60
General population	180-Day Follow-Up Interview	320	1	18/60

Daniel Holcomb,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2011–7888 Filed 4–1–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day-11–11DT]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 or send comments to Daniel Holcomb, CDC Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Monitoring Outcomes of the Enhanced Comprehensive HIV Prevention Planning (ECHPP) Project-New-National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The scope of the HIV epidemic in the United States is significant, particularly in large urban areas where HIV/AIDS cases are concentrated. In 2006, approximately 56,000 new HIV infections occurred in the U.S., demonstrating the need to expand targeted HIV prevention efforts. In 2010, twelve U.S. metropolitan statistical areas (MSAs) received funding, through their city and state health departments, to conduct the Enhanced Comprehensive HIV Prevention Planning (ECHPP) project. These twelve MSAs (Atlanta, GA; Baltimore, MD; Chicago, IL; Dallas, TX; District of Columbia; Houston, TX; Los Angeles, CA; Miami, FL; New York City, NY; Philadelphia, PA; San Francisco, CA; and San Juan, PR) had the highest AIDS prevalence rates in the U.S. at the end of 2007, representing 44% of all U.S. AIDS cases. The purpose of ECHPP is to enhance existing HIV prevention services in these high prevalence areas and provide an optimal mix of evidence-based behavioral, biomedical, and structural interventions to have maximum impact on the HIV/AIDS epidemic at the community level. ECHPP goals are consistent with CDC's Division of HIV/AIDS Prevention Strategic Plan for HIV Prevention and with the National HIV/AIDS Strategy: (1) Prevent new HIV infections, (2) increase linkage to, and impact of, prevention and care services for HIV-positive individuals, and (3) reduce HIV-related health disparities.

To evaluate ECHPP, data will be collected through both existing CDC data sources and through new data collection activities. Existing CDC data sources will include HIV surveillance systems (*e.g.,* National HIV Behavioral Surveillance System, Medical Monitoring Project) that routinely collect information about behavioral and clinical outcomes from at-risk target populations in the 12 MSAs. A new data collection activity is proposed through this project to collect information about behavioral and clinical outcomes from injection drug users, high-risk heterosexuals, and HIV-positive individuals who access medical care in six of the 12 ECHPP-funded MSAs. These MSAs are: District of Columbia; Houston, TX; Los Angeles, CA; Miami, FL; New York City, NY; and San Francisco, CA. The purpose of this new data collection activity is to monitor community-level outcomes of ECHPP and supplement HIV surveillance data routinely collected in these areas. Outcome data will be collected in these MSAs at two time points from 2011 to 2014.

Two surveys will be used in this project: (1) A community-based survey to be administered to injection drug users and high-risk heterosexuals, and (2) a clinic-based survey to be administered to HIV-positive individuals seeking care at clinics that provide HIV-related services. Both surveys will collect data on demographics, sexual behavior, alcohol and drug use history, HIV testing experiences, exposure to HIV prevention messages, and participation in HIV prevention activities. The clinic survey will also include questions about HIV treatment, treatment adherence, sources of care, and medical outcomes. For the community survey, we intend to recruit and screen 1500 injection drug users and 1500 high-risk heterosexuals using venue-based, convenience sampling methods. For the clinic survey, we intend to recruit and screen 2400 HIV-positive individuals seeking HIV care at medical clinics. A total of 1200 eligible injection drug users (age ≥ 18 yrs), 1200 eligible high-risk heterosexuals (age 18 to 60 yrs), and 2400 eligible HIV-positive individuals (age ≥ 18 yrs) will be surveyed. CDC will collaborate with local health department staff and outreach workers in each MSA to identify venues and clinics appropriate for data collection. Surveys will be administered by trained, local interviewers. There is no cost to respondents other than their time.

ESTIMATE OF ANNUALIZED BURDEN TABLE

Target population	Data collection form	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Injection drug users	Community Screener	500	1	5/60	42
Eligible injection drug users	Community Survey	400	1	25/60	167
High-risk heterosexual individuals	Community Screener	500	1	5/60	42
Eligible high-risk heterosexual individuals	Community Survey	400	1	25/60	167
HIV-positive individuals	Clinic Screener	933	1	5/60	78

ESTIMATE OF ANNUALIZED BURDEN TABLE—Continued

Target population	Data collection form	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Eligible HIV-positive individuals	Clinic Survey	800	1	25/60	333
Total					829

Daniel Holcomb,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2011–7886 Filed 4–1–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Initial Review

The meeting announced below concerns Virologic Evaluation of the Modes of Influenza Virus Transmission among Humans, Funding Opportunity Announcement (FOA), IP11–001, initial review.

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting:

Time and Date: 8 a.m.–5 p.m., May 17, 2011 (Closed).

Place: Sheraton Gateway Hotel Atlanta Airport, 1900 Sullivan Road, Atlanta, Georgia 30337, Telephone: (770) 997–1100.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the initial review, discussion, and evaluation of applications received in response to "Virologic Evaluation of the Modes of Influenza Virus Transmission among Humans, FOA IP11–001."

Contact Person for More Information: Gregory Anderson, M.S., M.P.H., Scientific Review Officer, CDC, 1600 Clifton Road, NE., Mailstop E60, Atlanta, Georgia 30333, Telephone: (404) 498–2293.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: March 29, 2011.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2011–7883 Filed 4–1–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Initial Review

The meeting announced below concerns Economic Studies of Vaccines and Immunization Policies, Programs, and Practices, Funding Opportunity Announcement (FOA), IP11–007, initial review.

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting:

Time and Date: 12 p.m.–2 p.m., June 14, 2011 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the initial review, discussion, and evaluation of applications received in response to "Economic Studies of Vaccines and Immunization Policies, Programs, and Practices, FOA IP11–007, initial review."

Contact Person for More Information: Amy Yang, PhD, Scientific Review Officer, CDC, 1600 Clifton Road, NE., Mailstop E60, Atlanta, Georgia 30333, Telephone: (404) 498–2733.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: March 29, 2011.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2011–7882 Filed 4–1–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Statement of Organization, Functions, and Delegations of Authority

Part F of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Centers for Medicare & Medicaid Services (CMS), (**Federal Register**, Vol. 75, No. 56, pp. 14178, dated Wednesday, March 24, 2010) is amended to reflect updates to the functions for the Center for Strategic Planning (FCK).

Part F. is described below:

• Section FC. 20. (Functions) reads as follows:

Center for Strategic Planning (FCK)

• Provide senior leadership over the strategic planning process and the development of CMS strategic goals, metrics, and plans.

• Direct the development of financial and health care trend analysis and management insight report to inform senior CMS leadership strategic decision making.

• Set priorities for CSP direction, budget, personnel, and staff development.

• Translate statistical data into information useful to agency leadership.

• Provide leadership to the development of performance dashboards and databases for key agency initiatives.

• Provide leadership in maintaining and ensuring quality of data resources needed for testing and evaluating demonstrations and innovations.

• Direct the development of enterprise business plans, process requirement for CMS post ACA

administrative, provider, and customer services process.

• Facilitate plans for IT Integration of data resources and data services.

• Coordinate policy analysis, development and execution for CMS.

• Build and maintain agency capacity to perform analysis of regional variation in the quality and cost of care.

• Conduct and manage surveys to capture information about beneficiary populations that our programs serve that is not available in the administrative data. This includes the Medicare Current Beneficiary Survey (MCBS) and the Medicare Health Outcomes Survey (HOS).

• Conduct and manage the Research Data Assistance Center (RESDAC), Research Data Distribution Center (RDDC) and Chronic Condition Warehouse (CCW) activities.

• Operationalize research-usable files for Medicare, Medicaid, and CHIP administrative data.

Dated: March 24, 2011.

Marilyn Tavenner,

Principal Deputy Administrator and Chief Operating Officer, Centers for Medicare & Medicaid Services.

[FR Doc. 2011–7903 Filed 4–1–11; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Reunification Procedures for Unaccompanied Alien Children.

OMB No.: 0970–0278.

Description: Following the passage of the 2002 Homeland Security Act (Pub. L. 107–296), the Administration for Children and Families (ACF), Office of Refugee Resettlement (ORR), is charged with the care and placement of unaccompanied alien children in Federal custody, and implementing a policy for the release of these children, when appropriate, upon the request of suitable sponsors while awaiting immigration proceedings. In order for ORR to make determinations regarding the release of these children, the potential sponsors must meet certain conditions pursuant to section 462 of the Homeland Security Act and the Flores v. Reno Settlement Agreement No. CV85 4544–RJK (C.D. Cal. 1997). The proposed information collection requests information to be utilized by ORR for determining the suitability of a sponsor/respondent for the release of a minor from ORR custody. The proposed instruments are the Sponsors Agreement to Conditions of Release, Verification of Release, Family Reunification Packet, and the Authorization for Release of Information.

Respondents: Sponsors requesting release of unaccompanied alien.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Verification of Release (UAC)	4,595	1	0.25	1,148.75
Authorization for Release of Information (Sponsor)	4,595	1	0.25	1,148.75
Family Reunification Packet (Sponsor)	4,595	1	1	4,595
Sponsors Agreement to Conditions of Release (Sponsor)	4,595	1	0.25	1,148.75
Verification of Release (Case Worker)	4,595	1	0.25	1,148.75
Authorization for Release of Information (Case Worker)	4,595	1	0.25	
Family Reunification Packet (Case Worker)	4,595	1	1	4,595
Sponsors Agreement to conditions of Release (Case Worker)	4,595	1	0.25	1,148.75

Estimated Total Annual Burden Hours: 16,082.50.

Additional Information:

Copies of the proposed collection may be obtained 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. All requests should be identified by the title of the information collection. *E-mail address: infocollection@acf.hhs.gov.*

OMB Comment:

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, *Fax:* 202–395–7285, *E-mail: OIRA_SUBMISSION@OMB.EOP.GOV, Attn:* Desk Officer for the Administration for Children and Families.

Dated: March 29, 2011.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2011–7823 Filed 4–1–11; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0474]

Maja S. Ruetschi: Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is issuing an order under the Federal Food, Drug, and Cosmetic Act (the FD&C Act) debarring Maja S. Ruetschi, MD for 5 years from providing services in any capacity to a person that has an approved or pending drug product application. FDA bases this order on findings that Dr. Ruetschi was convicted of a misdemeanor under Federal law for conduct relating to the regulation of a drug product under the FD&C Act and that the type of conduct underlying the conviction undermines the process for the regulation of drugs. Dr. Ruetschi was given notice of the proposed debarment and an opportunity to request a hearing within the timeframe prescribed by regulation. Dr. Ruetschi failed to respond. Dr. Ruetschi's failure to respond constitutes a waiver of her right to a hearing concerning this action.

DATES: This order is effective April 4, 2011.

ADDRESSES: Submit applications for termination of debarment to the Division of Dockets Management (HFA–

305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Kenny Shade, Division of Compliance Policy (HFC–230), Office of Enforcement, Office of Regulatory Affairs, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–796–4640.

SUPPLEMENTARY INFORMATION:

I. Background

Section 306(b)(2)(B)(i)(I) of the FD&C Act (21 U.S.C. 335a(b)(2)(B)(i)(I)) permits FDA to debar an individual if it finds that the individual has been convicted of a misdemeanor under Federal law for conduct relating to the regulation of drug products under the FD&C Act, and if FDA finds that the type of conduct that served as the basis for the conviction undermines the process for the regulation of drugs.

On June 18, 2008, Dr. Ruetschi pleaded guilty to a misdemeanor offense of receipt and delivery of a misbranded drug in interstate commerce in violation of 21 U.S.C. 331(c), 333(a)(1), and 352(f). On July 2, 2008, the U.S. District Court for the Central District of California entered judgment against Dr. Ruetschi for receipt in interstate commerce of misbranded drug and delivery thereof.

FDA's finding that debarment is appropriate is based on the misdemeanor conviction referenced herein. The factual basis for the conviction is as follows: Dr. Ruetschi was a licensed medical doctor in the State of California and maintained an office in Palm Desert, CA. Beginning on or about January 20, 2004, and continuing until on or about October 20, 2004, Dr. Ruetschi began ordering from Toxin International, Inc., (TRI) an unapproved drug product represented to be a Botulinum Toxin Type A product (TRI-toxin). Specifically, Dr. Ruetschi placed 11 orders for a total of 11 vials of TRI-toxin, which was shipped in interstate commerce from Tucson, AZ to her office in Palm Desert, CA. Dr. Ruetschi subsequently administered the TRI-toxin to her patients for the treatment of facial wrinkles. The TRI-toxin bore warnings that it was not for human use and did not bear any directions for human use, and was misbranded under 21 U.S.C. 352(f) in that it lacked adequate directions for use.

As a result of her convictions, on January 5, 2011, FDA sent Dr. Ruetschi a notice by certified mail proposing to debar her for 5 years from providing services in any capacity to a person that has an approved or pending drug product application. The proposal was based on a finding, under section 306(b)(2)(B)(i)(I) of the FD&C Act (21 U.S.C. 335a(b)(2)(B)(i)(I)), that Dr. Ruetschi was convicted of a misdemeanor under Federal law for conduct relating to the regulation of drug products under the FD&C Act, and the conduct that served as a basis for the conviction undermines the process for the regulation of drugs. The proposal also offered Dr. Ruetschi an opportunity to request a hearing, providing her 30 days from the date of receipt of the letter in which to file the request, and advised her that failure to request a hearing constituted a waiver of the opportunity for a hearing and of any contentions concerning this action. Dr. Ruetschi failed to respond within the timeframe prescribed by regulation and has, therefore, waived her opportunity for a hearing and waived any contentions concerning her debarment (21 CFR part 12).

II. Findings and Order

Therefore, the Director, Office of Enforcement, Office of Regulatory Affairs, under section 306(b)(2)(B)(i)(I) of the FD&C Act under authority delegated to him (Staff Manual Guide 1410.35), finds that Maja S. Ruetschi has been convicted of a misdemeanor under Federal law for conduct relating to the regulation of a drug product under the FD&C Act, and that the type of conduct that served as a basis for the conviction undermines the process for the regulation of drugs.

As a result of the foregoing finding, Dr. Ruetschi is debarred for 5 years from providing services in any capacity to a person with an approved or pending drug product application under sections 505, 512, or 802 of the FD&C Act (21 U.S.C. 355, 360b, or 382), or under section 351 of the Public Health Service Act (42 U.S.C. 262), effective (see **DATES**), (see sections 306(c)(1)(B), (c)(2)(A)(iii), and 201(dd) of the FD&C Act (21 U.S.C. 321(dd))). Any person with an approved or pending drug product application who knowingly employs or retains as a consultant or contractor, or otherwise uses the services of Dr. Ruetschi, in any capacity during Dr. Ruetschi's debarment, will be subject to civil money penalties (section 307(a)(6) of the FD&C Act (21 U.S.C. 335b(a)(6))). If Dr. Ruetschi provides services in any capacity to a person with an approved or pending drug product application during her period of debarment she will be subject to civil money penalties (section 307(a)(7) of the FD&C Act). In addition, FDA will not accept or review any abbreviated new drug applications submitted by or with the assistance of Dr. Ruetschi during her period of debarment (section 306(c)(1)(B) of the FD&C Act).

Any application by Dr. Ruetschi for termination of debarment under section 306(d)(1) of the FD&C Act should be identified with Docket No. FDA–2010–N–0474 and sent to the Division of Dockets Management (see **ADDRESSES**). All such submissions are to be filed in four copies. The public availability of information in these submissions is governed by 21 CFR 10.20(j).

Publicly available submissions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 23, 2011.

Howard Sklamberg,

Director, Office of Enforcement, Office of Regulatory Affairs.

[FR Doc. 2011–7782 Filed 4–1–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0476]

Marilyn A. Mehlmauer: Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is issuing an order under the Federal Food, Drug, and Cosmetic Act (the FD&C Act) debarring Marilyn Mehlmauer, MD for 4 years from providing services in any capacity to a person that has an approved or pending drug product application. FDA bases this order on findings that Dr. Mehlmauer was convicted of a misdemeanor under Federal Law for conduct relating to the regulation of a drug product under the FD&C Act and that the type of conduct underlying the conviction undermines the process for the regulation of drugs. Dr. Mehlmauer was given notice of the proposed debarment and an opportunity to request a hearing within the timeframe prescribed by regulation. Dr. Mehlmauer failed to respond. Dr. Mehlmauer's failure to respond constitutes a waiver of her right to a hearing concerning this action.

DATES: This order is effective April 4, 2011.

ADDRESSES: Submit applications for termination of debarment to the Division of Dockets Management (HFA–305), Food and Drug Administration,

5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Kenny Shade, Division of Compliance Policy (HFC–230), Office of Enforcement, Office of Regulatory Affairs, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–796–4640.

SUPPLEMENTARY INFORMATION:

I. Background

Section 306(b)(2)(B)(i)(I) of the FD&C Act (21 U.S.C. 335a(b)(2)(B)(i)(I)) permits FDA to debar an individual if it finds that the individual has been convicted of a misdemeanor under Federal law for conduct relating to the regulation of drug products under the FD&C Act, and if FDA finds that the type of conduct that served as the basis for the conviction undermines the process for the regulation of drugs.

On November 13, 2007, Dr. Mehlmauer pleaded guilty to a misdemeanor offense of Receipt in Interstate Commerce of Misbranded Drug and Delivery thereof in violation of 21 U.S.C. 331(c), 333(a)(1), and 352(f). On November 13, 2007 the U.S. District Court, for the Central District of California entered judgment against Dr. Mehlmauer for misdemeanor misbranding.

FDA's finding that debarment is appropriate is based on the misdemeanor conviction referenced herein. The factual basis for the conviction is as follows: Dr. Mehlmauer was a physician with an office located in Pasadena, CA. In August 2003, Dr. Mehlmauer began ordering an unapproved drug product represented to be a Botulinum Toxin Type A drug product (TRI-toxin) manufactured by Toxin Research International, Inc. (TRI), located in Tucson, AZ. From on or about August 27, 2003, and continuing to on or about November 22, 2004, Dr. Mehlmauer placed 12 orders for a total of 26 vials of TRI-toxin, which she had shipped to her office. The TRI-toxin did not come with labeling or directions on how to dilute the product for injection, and therefore was misbranded under 21 U.S.C. 352(f) in that it lacked adequate directions for use. The TRI-toxin label stated "for research purposes only" and "not for human use." Dr. Mehlmauer admitted to injecting the unapproved TRI-toxin into patients and on some occasions to representing to patients that the TRI-toxin was BOTOX®/ BOTOX® Cosmetic, at that time the only approved Botulinum Toxin Type A drug. Dr. Mehlmauer delivered and proffered for delivery the unapproved, misbranded TRI-toxin when she ordered, received, and administered it to other persons, all in violation of 21 U.S.C. 331(c), 333(a)(1), and 352(f).

As a result of her convictions, on January 19, 2011, FDA sent Dr. Mehlmauer a notice by certified mail proposing to debar her for 4 years from providing services in any capacity to a person that has an approved or pending drug product application. The proposal was based on a finding, under section 306(b)(2)(B)(i)(I) of the FD&C Act, that Dr. Mehlmauer was convicted of a misdemeanor under Federal law for conduct relating to the regulation of drug products under the FD&C Act, and the conduct that served as a basis for the conviction undermines the process for the regulation of drugs. The proposal also offered Dr. Mehlmauer an opportunity to request a hearing, providing her 30 days from the date of receipt of the letter in which to file the request, and advised her that failure to request a hearing constituted a waiver of the opportunity for a hearing and of any contentions concerning this action. Dr. Mehlmauer failed to respond within the timeframe prescribed by regulation and has, therefore, waived her opportunity for a hearing and waived any contentions concerning her debarment (21 CFR part 12).

II. Findings and Order

Therefore, the Director, Office of Enforcement, Office of Regulatory Affairs, under section 306(b)(2)(B)(i)(I) of the FD&C Act under authority delegated to him (Staff Manual Guide 1410.35), finds that Marilyn Mehlmauer has been convicted of a misdemeanor under Federal law for conduct relating to the regulation of a drug product under the FD&C Act, and that the type of conduct that served as a basis for the conviction undermines the process for the regulation of drugs.

As a result of the foregoing finding, Dr. Mehlmauer is debarred for 4 years from providing services in any capacity to a person with an approved or pending drug product application under sections 505, 512, or 802 of the FD&C Act (21 U.S.C. 355, 360b, or 382), or under section 351 of the Public Health Service Act (42 U.S.C. 262), effective (see **DATES**), (see section 306(c)(1)(B), (c)(2)(A)(iii), and 201(dd) of the FD&C Act (21 U.S.C. 321(dd))). Any person with an approved or pending drug product application who knowingly employs or retains as a consultant or contractor, or otherwise uses the services of Dr. Mehlmauer, in any capacity during Dr. Mehlmauer's debarment, will be subject to civil money penalties (section 307(a)(6) of the FD&C Act (21 U.S.C. 335b(a)(6))). If Dr. Mehlmauer provides services in any capacity to a person with an approved or pending drug product application during her period of debarment she will be subject to civil money penalties (section 307(a)(7) of the FD&C Act). In addition, FDA will not accept or review any abbreviated new drug applications submitted by or with the assistance of Dr. Mehlmauer during her period of debarment (section 306(c)(1)(B) of the FD&C Act).

Any application by Dr. Mehlmauer for termination of debarment under section 306(d)(1) of the FD&C Act should be identified with Docket No. FDA–2010–N–0476 and sent to the Division of Dockets Management (see **ADDRESSES**). All such submissions are to be filed in four copies. The public availability of information in these submissions is governed by 21 CFR 10.20(j).

Publicly available submissions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 23, 2011.

Howard Sklamberg,

Director, Office of Enforcement, Office of Regulatory Affairs.

[FR Doc. 2011–7783 Filed 4–1–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2006–D–0464] (Formerly Docket No. 2006D–0331)

Guidance for Institutional Review Boards, Clinical Investigators, and Sponsors: Exception From Informed Consent for Emergency Research; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance entitled "Guidance for Institutional Review Boards, Clinical Investigators, and Sponsors: Exception from Informed Consent for Emergency Research." This guidance is intended to assist institutional review boards (IRBs), clinical investigators, and sponsors in the development, conduct, and oversight of research involving FDA-regulated products (*e.g.,* drugs, biological products, devices) in emergency settings when an exception from the informed consent requirements is requested under the Code of Federal Regulations (CFR). FDA determined that

guidance is needed in interpreting and complying with these regulations, particularly in the areas of planning and conducting community consultation and public disclosure activities, and the establishment of informed consent procedures to be used when feasible. The guidance announced in this notice finalizes the draft guidance of the same title, dated July 2006.

DATES: Submit either electronic or written comments on Agency guidances at any time.

ADDRESSES: Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993–0002 (1–888–463–6332 or 301–796–3400), or the Office of Communication, Outreach and Development (HFM–40), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448 (1–800–835–4709 or 301–827–1800); or the Division of Small Manufacturers, International, and Consumer Assistance, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 4613, Silver Spring, MD 20993 (1–800–638–2041 or 301–796–7100). Send one self-addressed adhesive label to assist the office in processing your requests. *See* the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit electronic comments on the guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Sara Goldkind, Office of Good Clinical Practice, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 5129, Silver Spring, MD 20993–0002, 301–796–8340.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance entitled "Guidance for Institutional Review Boards, Clinical Investigators, and Sponsors: Exception From Informed Consent for Emergency Research." This guidance is intended to assist IRBs, clinical investigators, and sponsors in the development, conduct, and oversight of research involving FDA-regulated products (*e.g.,* drugs, biological products, devices) in emergency settings when an exception from the informed consent requirements is requested under title 21 of the CFR (21 CFR 50.24). The exception applies to investigations to determine the safety and/or effectiveness of FDA-regulated products used in emergency settings (emergency research). These investigations involve human subjects who have a life-threatening medical condition (for which available treatments are unproven or unsatisfactory), and who, because of their condition (*e.g.,* traumatic brain injury), cannot give informed consent. The research involves an investigational product that, to be effective, must be administered before informed consent from the subjects' legally authorized representatives can be obtained.

In the **Federal Register** of August 29, 2006 (71 FR 51198), FDA announced the availability of the draft guidance of the same title, dated July 2006. The same **Federal Register** (71 FR 51143) announced a public hearing, held on October 11, 2006, on emergency research conducted without informed consent under FDA's emergency research regulations.

FDA received numerous comments on the draft guidance. All comments received during the comment period, questions received by Agency staff related to implementation of the regulations, and information presented at the public hearing have been carefully reviewed and, where appropriate, incorporated into the guidance. A summary of changes includes the following: (1) Additional discussion of the goals and purpose of community consultation and public disclosure, information that should be included, and how community consultation and public disclosure activities may be implemented; (2) clarification of "unproven" and "unsatisfactory" with respect to available therapy; and (3) discussion of trial design issues (*e.g.*, study endpoints, therapeutic window. This guidance incorporates comments received on earlier drafts of the guidance document, questions received by Agency staff related to implementation of the regulations, and information presented at the October 11, 2006, public meeting on emergency research studies.

The guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents FDA's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. The Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 56 have been approved under OMB control number 0910–0130, the collections of information in 21 CFR part 312 have been approved under OMB control number 0910–0014, and the collections of information in 21 CFR part 812 have been approved under OMB control number 0910–0078. Modifications to these approved information collection requirements are underway or will be made at the time that each information collection is renewed. The Agency believes that this is appropriate because this guidance has only a minor impact on these existing collections of information.

III. Comments

Interested persons may submit to the Division of Dockets Management (*see* **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

IV. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm, http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/default.htm,* or *http://www.regulations.gov.*

Dated: March 29, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–7846 Filed 4–1–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Statement of Organization, Functions and Delegations of Authority

This notice amends Part R of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services (HHS), Health Resources and Services Administration (HRSA) (60 FR 56605, as amended November 6, 1995; as last amended at 75 FR 68806–68808 dated November 9, 2010).

This notice reflects organizational changes to the Health Resources and Services Administration. Specifically, this notice updates the Healthcare Systems Bureau (RR) mission and better aligns functional responsibility, improve management and administrative efficiencies, and optimize use of available staff resources.

Chapter RR—Healthcare Systems Bureau

Section RR–00, Mission

The Healthcare Systems Bureau leads the Agency in providing health care programs to eligible organizations around the country. This includes providing overall leadership and direction for the procurement allocation and transplantation of human organs, blood stem cell and cord blood; providing architectural/engineering support for construction/renovation of health care facility projects; managing and promoting the 340B Drug Pricing Program; directing and administering the Poison Center Support, Enhancement, and Awareness Act, the National Vaccine Injury Compensation and the Countermeasures Injury Compensation Programs.

Section RR–10, Organization

Delete in its entirety and replace with the following:

The Healthcare Systems Bureau (RR) is headed by the Associate Administrator, who reports directly to the Administrator, Health Resources and Services Administration. The Healthcare Systems Bureau includes the following components:

(1) Office of the Associate Administrator (RR);

(2) Division of Transplantation (RR1);

(3) Division of Health Facilities (RR9);

(4) Division of Vaccine Injury Compensation (RR4); and

(5) Office of Pharmacy Affairs (RR7).

Section RR–20, Functions

Delete the functional statement for the Healthcare Systems Bureau (RR) and replace in its entirety.

Office of the Associate Administrator (RR)

The Healthcare Systems Bureau leads the Agency in providing health care programs to eligible organizations around the country. Specifically, (1) administers the Organ Transplantation Program (OTP) to include the Organ Procurement and Transplantation Network (OPTN) to facilitate the allocation of donor organs to patients waiting for an organ transplant and the Scientific Registry of Transplant Recipients that provides analytic support to the OPTN in the development and assessment of organ allocation and other OPTN policies; (2) administers the C.W. Bill Young Cell Transplantation Program to increase the number of unrelated blood stem cell transplants and improve the outcomes of blood stem cell transplants; (3) administers the National Cord Blood Inventory (NCBI) to increase the number of high quality cord blood units available for transplantation; (4) develops and maintains a national program of grants and contracts to organ procurement organizations and other entities to increase the number of organs made available for transplantation; (5) manages the national program for compliance with the Hill-Burton uncompensated care requirement and other assurances; (6) directs and administers a congressionally-directed grant program for the construction/renovation/equipping of health care and other facilities; (7) directs and administers the National Vaccine Injury Compensation Program; (8) manages and promotes the 340B Drug Pricing Program; (9) directs and administers the Poison Center Support, Enhancement, and Awareness Act; (10) directs and administers the State Health Access Program that awards grants to States to expand access to affordable healthcare coverage for people who are uninsured; and (11) implements and administers the Countermeasures Injury Compensation Program (CICP) under PREP Act authorities.

The Poison Control Program (PCP) administers the activities authorized by the Poison Center Support, Enhancement and Awareness Act of 2008, which includes: (1) Maintaining the national toll-free Poison Help hotline (800–222–1222), connecting callers to their local poison control center; (2) implementing and expanding a national media campaign to educate the public and health care providers about poison prevention and the availability of local poison control centers; and (3) awarding grants to certified poison control centers for the purposes of preventing and providing treatment recommendations for poisonings.

The Countermeasures Injury Compensation Program (CICP) administers the Federal compensation program established by the Public Readiness and Emergency Preparedness Act ("PREP Act") enacted as Division C of the Defense Appropriations Act for fiscal year 2006, Public Law 109–148, which added new authorities under the Public Health Service (PHS) Act to alleviate concerns about liability related to the manufacture, testing, development, distribution, administration, and use of countermeasures against chemical, biological, radiological and nuclear agents of terrorism, epidemics, and pandemics. The Office discharges all PREP Act authorities regarding compensation including: (1) Developing and disseminating requests for benefits information to inform individuals that the CICP exists so that people requesting benefits do not miss the 1-year filing deadline; (2) accepting letters of intent to file requests for benefits so that individuals preserve their rights to file by the 1-year deadline; (3) evaluation of requests for benefits for compensation filed under the CICP through medical review and assessment of compensability for all complete claims; (4) processing of requests for benefits made under the CICP; (5) promulgation of regulations to create and revise the CICP Vaccine Injury Tables; (6) development and maintenance of all automated information systems necessary for Program implementation; and (7) collection, analysis and dissemination of Program information.

Division of Transplantation (RR1)

The Division of Transplantation (DoT), on behalf of the Secretary of Health and Human Services (HHS), administers national systems to facilitate solid organ and blood stem cell transplantation including: the Organ Transplantation Program (OTP), the C.W. Bill Young Cell Transplantation Program (CWBYCTP), the National Cord Blood Inventory (NCBI), cross-cutting medical activities and the breakthrough collaborative to increase the number of deceased donor organs made available for transplantation.

Division of Health Facilities (RR9)

The Division of Health Facilities (DOHF) substantiates health facilities'

compliance with the Hill-Burton uncompensated services assurance and administers construction grant programs under section 1610(b) of the Public Health Service Act, under the Health Care and Other Facilities (HCOF) program, and under the Patient Protection and Affordable Care Act, Public Law 111–148. Specifically, the Division: (1) Administers the process for awarding new construction and equipment grants, under section 1610(b), the HCOF, and the PPACA programs, including ensuring the delivery of comprehensive architectural and engineering services and ensuring compliance with historic preservation and other laws and regulations related to construction projects, maintains a computerized database of key project information, and provides technical assistance in application preparation to potential grantees under Division grant programs; (2) monitors grant projects during construction to assure compliance with the terms of the award, reviews requests for changes in scope to grant projects, and obtains information needed to close out completed grant projects; (3) establishes, develops, monitors, and enforces the implementation of Hill-Burton regulations, policies, procedures, and guidelines for use by staff and health care facilities; (4) maintains a system for receipt, analysis and disposition of audit appeals by Hill-Burton obligated facilities and for receiving and responding to patient complaints; (5) manages the recovery or waiver of recovery of Federal grant funds process for Titles VI and XVI; (6) manages the national Hill-Burton Hotline to ensure that consumers receive timely and accurate information on the program; and (7) provides architectural and engineering services to other Agencies such as the Administration for Children and Families and the Food and Drug Administration.

Division of Vaccine Injury Compensation (RR4)

This Division of Vaccine Injury Compensation (DVIC) administers all statutory authorities related to the operation of the National Vaccine Injury Compensation Program (VICP) by the: (1) Evaluation of petitions for compensation filed under the VICP through medical review and assessment of compensability for all complete claims; (2) processing of awards for compensation made under the VICP; (3) promulgation of regulations to revise the Vaccine Injury Table; (4) provision of professional and administrative support to the Advisory Commission on Childhood Vaccines (ACCV); (5) development and maintenance of all automated information systems necessary for program implementation; (6) provision and dissemination of program information; and (7) contributes to the understanding of vaccine-related adverse events through the analysis of VICP claims. The VICP maintains a working relationship with other relevant Federal and private sector partners in its administration and operation.

Office of Pharmacy Affairs (RR7)

The Office of Pharmacy Affairs (OPA) promotes access to clinical and cost effective pharmacy services to enable participating entities to stretch scarce Federal resources in order to serve more patients, expand their services or offer additional services. Specifically the office: (1) Manages the 340B involvement of pharmaceutical manufacturers that participate in the Medicaid program, through Pharmaceutical Pricing Agreements; (2) maintains a publicly accessible database of participating covered entities, sites, and contract pharmacies; (3) publishes guidelines/regulations to assist in the understanding and participation in the 340B Program; (4) maintains a Prime Vendor Program to increase the value of the 340B Program; (5) maintains the Pharmacy Services Support Center to assist OPA and the diverse Program stakeholders to understand and make best use of the 340B Program; (6) fosters mutually productive relationships with Federal and private sector partners; (7) provides a national platform for the coordination and development of leading practices for pharmacy services; (8) promotes comprehensive and efficient pharmacy management application and systems use to ensure safe and effective medication use; and (9) manages quality improvement activities such as the Patient Safety and Clinical Pharmacy Services Collaborative.

Section RR–30, Delegations of Authority

All delegations of authority and re-delegations of authority made to HRSA officials that were in effect immediately prior to this reorganization, and that are consistent with this reorganization, shall continue in effect pending further re-delegation.

This reorganization is upon date of signature.

Dated: March 28, 2011.

Mary K. Wakefield,

Administrator.

[FR Doc. 2011–7781 Filed 4–1–11; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of Federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

New Molecules for HIV Therapeutics: Fab, scFv, and Related Binding Molecules Specific for HIV–1 Rev

Description of Invention: The invention offered for licensing and commercial development is in the field of HIV therapeutics. More specifically, the invention relates to methods and compositions for treating and/or inhibiting HIV infection or any other lentivirus. The invention describes the identification, though phage display, of a chimeric rabbit/human anti-Rev Fab (SJS–R1) that can inhibit polymerization of the HIV Rev protein and thus inhibit its normal function in virus replication. The Fab binds with very high affinity to a conformational epitope in the N-terminal half of HIV–1 Rev. The corresponding single chain antibody (scFv) was also prepared and characterized. Methods of making and using SJS–R1 Fab and SJS–R1 scFv, and antibodies and antibody fragments that share at least one CDR with SJS–R1 Fab, are provided. Specific described methods include methods of preventing or reversing polymerization of HIV Rev, methods of reducing infectivity of replication of a lentivirus, inhibiting Rev function in a cell infected with a lentivirus, and methods of treating a

disease or symptom associated with Rev expression in an animal.

Applications: HIV therapeutics.

Advantages

- The invention utilizes a novel target and thus can be effective in conjunction with other HIV drugs.
- The chimeric structure of the Fab makes it possible to produce it in rabbit in high yields while being readily applicable for human treatment.

Development Status: The therapeutic molecules have been produced and their strong affinity to Rev and its inhibitory effect on HIV proliferation was demonstrated.

Inventors: Stephen J. Stahl (NIAMS) *et al.*

Patent Status: U.S. Provisional Application No. 61/439,307 filed February 3, 2011 (HHS Reference No. E–064–2011/0–US–01), entitled "Generation and Use of Fab, scFv, and Related Binding Molecules Specific for HIV–1 Rev."

Related Publications

1. Stahl SJ, Watts NR, Rader C, DiMattia MA, Mage RG, Palmer I, Kaufman JD, Grimes JM, Stuart DI, Steven AC, Wingfield PT. Generation and characterization of a chimeric rabbit/human Fab for co-crystallization of HIV–1 Rev. J Mol Biol. 2010 Apr 2;397(3):697–708. [PubMed: 20138059]

2. DiMattia MA, Watts NR, Stahl SJ, Rader C, Wingfield PT, Stuart DI, Steven AC, Grimes JM. Implications of the HIV–1 Rev dimer structure at 3.2 A resolution for binding to the Rev response element. Proc Natl Acad Sci U S A. 2010 Mar 30;107(13):5810–5814. [PubMed: 20231488]

Licensing Status: Available for licensing and commercial development.

Licensing Contacts

- Uri Reichman, PhD, MBA; 301–435–4616; *UR7a@nih.gov.*
- John Stansberry, PhD; 301–435–5236; *js852e@nih.gov.*

Collaborative Research Opportunity: The National Institute of Arthritis and Musculoskeletal and Skin Diseases, Protein Expression Laboratory is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize the technology. Please contact Cecilia Pazman, PhD at 301–402–5579 for more information.

Modulation of Leucine-Rich Repeats and Calponin Homology Domain-Containing Protein 4 (Lrch4) Activity for Therapeutic Applications

Description of Invention: NIH Inventors have recently discovered a novel Leucine-rich repeat and calponin homology domain-containing protein 4 (Lrch4) in a proteomic screen of the plasma membrane of lipopolysaccharide (LPS)-exposed macrophages. Expression data by RT–PCR revealed that all Lrch family members (1–4) are expressed in macrophages, but only Lrch4 was recruited into lipid rafts (signaling microdomains of the plasma membrane) by LPS. Lrch4 is the most highly expressed Lrch family member in mouse tissues. It is a predicted single-spanning transmembrane protein that is encoded by the Lrch4 gene in humans. The Lrch4 ectodomain is predicted to have a series of leucine-rich repeats, the motifs by which Toll like Receptors (TLR) are thought to bind microbial ligands. The human form of Lrch4 is 83% identical to murine Lrch4 and is predicted to have 680 amino acids and a molecular weight of 73 kDa.

NIH inventors have shown that Lrch4 is expressed on the plasma membrane of macrophages. They have determined that Lrch4 regulates pro-inflammatory signals (NF-κB activation, cytokine induction) emanating from all TLRs tested, and also regulates ligand-independent signals from MyD88. Further, LPS-induced p38, JNK, and NFκB activation are attenuated following Lrch4 knockdown, indicating that Lrch4 regulates upstream LPS signaling events. LPS-induced expression of the NF-κB-dependent cytokine TNFα was attenuated following Lrch4 knockdown at the level of both transcript and protein. Based on these and other findings, the inventors of this technology propose that Lrch4 may be a novel component of TLR receptor complexes and that modulation of Lrch4 activity might open up new opportunities for developing novel therapeutics for inflammatory diseases.

Applications: Identification and development of modulators of Lrch4 activity to treat inflammatory disorders, cancer, and sepsis.

Development Status: Early-stage.

Inventors: Michael B. Fessler, *et al.* (NIEHS).

Related Publication: Dhungana S *et al.* Quantitative proteomics analysis of macrophage rafts reveals compartmentalized activation of the proteasome and of proteasome-mediated ERK activation in response to lipopolysaccharide. Mol Cell Proteomics 2009 Jan; 8(1):201–213. [PubMed: 18815123]

Patent Status: U.S. Provisional Application No. 61/433,491 filed 17 January 2011 (HHS Reference No. E–012–2011/0–US–01).

Licensing Status: Available for licensing.

Licensing Contact: Suryanarayana Vepa, PhD, J.D.; 301–435–5020; *vepas@mail.nih.gov.*

Collaborative Research Opportunity: The National Institute of Environmental Health Sciences (NIEHS) Laboratory of Respiratory Biology is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize Lrch4. Please contact Dr. Elizabeth M. Denholm at *denholme@niehs.nih.gov* for more information.

Superparamagnetic Nanocomplexes and Their Use as Contrast Agents in MRI

Description of Invention: The invention offered for licensing and commercial development relates to the fields of cell therapy and tracking of such therapy by magnetic resonance imaging. More specifically the technology describes novel superparamagnetic magnetic resonance contrast agents, methods of making the agents, and methods of labeling cells with the contrast agents and imaging the labeled cells using magnetic resonance.

The self assembled agents are composed of three (3) components: Superparamagnetic iron oxide nanoparticle (*e.g.* F3O4), associated with a carbohydrate coating (*e.g.,* a polycation (*e.g.,* Protamine Sulfate); and a polycation (*e.g.,* glycosaminoglycan:Heparin). Self-assembling superparamagnetic nanocomplexes made from simple commercially available chemicals such as Heparin sulfate (H), Protamine sulfate (P), and Ferumoxytol nanocomplexes (HPF nanocomplexes) can effectively label stem cells, immune cells, tumor cells, or any other therapeutically engineered cells for cellular MRI. Biological cells can be labeled with the nanocomplexes by contacting cells under conditions sufficient to produce the nanocomplexes, or by contacting the cells with pre-assembled nanocomplexes. The labeled biological cells can be transplanted into an individual, imaged by MRI and the migration pattern and/or cellular distribution pattern of the labeled biological cells in the subject can then be detected. This technique will readily facilitate the tracking of the therapeutic cells, and thus render cell-based therapy and/or tissue repair more precise, accurate and effective.

Applications

Clinical—

- Cell-based therapy (*e.g.* stem cells, or immune cells therapy, genetic engineered cells); monitoring and

detecting cell trafficking and distribution.

• Diagnostics.

Research—

• Cell-based therapy.

• Tissue regeneration.

Advantages

• Avoid radioactive labeling.

• More efficient cell incorporation than the use of noncomplexed paramagnetic or superparamagnetic particles.

• Non toxic.

• Easily prepared from three (3) commercially available FDA approved drugs off label. No synthesis is required (self assembled).

• No FDA approved MRI contrast agent containing paramagnetic or superparamagnetic iron oxide nanoparticles.

Development Status

• The labeling complex has been repeatedly prepared. May require some further optimization for specific cell products and scale up.

• Incorporation into mammal cells has been demonstrated.

Market: The total U.S. market for imaging reagents was $2.8 billion in 2003 and is expected to grow to $4.5 billion by 2010 at an average annual growth rate of 6.9%. Sales of MRI reagents for cardiovascular applications were $770 million in 2003 and are expected to rise at an average annual growth rate of 7.0%. Reagents used in oncology and gastrointestinal tract are rising at average annual growth rates of 7.0% and 5.1%, respectively. The subject technology maybe readily applied in both diagnostics and therapeutic fields. A commercial development of the subject technology may therefore be attractive for commercial organizations.

Inventors: Joseph A. Frank *et al.* (CC).

Patent Status: U.S. Provisional Application No. 61/439,106 filed February 3, 2011 (HHS Reference No. E–285–2010/0–US–01), entitled "Superparamagnetic Nanocomplexes, Articles, and Methods of Use Thereof".

Relevant Publications

1. Frank JA, Anderson SA, Kalsih H, Lewis BK, Yocum GT, Arbab AS. Methods for magnetically labeling stem and other cells for detection by in vivo magnetic resonance imaging. Cytotherapy. 2004; 6(6):621–625. [PubMed: 15773025]

2. Arbab AS, Liu W, Frank JA. Cellular magnetic resonance imaging: current status and future prospects. Expert Rev Med Devices. 2006 Jul;3(4):427–439. [PubMed: 16866640]

Licensing Status: Available for licensing and commercial development.

Licensing Contacts

• Uri Reichman, PhD, MBA; 301–435–4616; *UR7a@nih.gov*.

• John Stansberry, PhD; 301–435–5236; *js852e@nih.gov*.

Collaborative Research Opportunity: The Clinical Center, Frank Laboratory, Radiology and Imaging Sciences, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize this technology. Please contact Joseph A. Frank MS MD at 301–402–4314 or *jafrank@helix.nih.gov* for more information.

Methods of Treating Age-Related Macular Degeneration

Description of Invention: Available for licensing is a novel method of treating age related macular degeneration (AMD). AMD is the leading cause of irreversible blindness in elderly populations worldwide. Inflammation, among other factors, has been suggested to play an important role in AMD pathogenesis. Recent studies have demonstrated a link between the complement system, inflammation, and AMD pathogenesis. Notably, researchers at NEI have shown that certain members of the C5a pathway are increased in AMD patients, and *in vitro* experiments demonstrated that those same pathway members cause a decrease in retinal pigment epithelium (RPE) viability, a hallmark of AMD. Blocking the C5a pathway presents a promising approach to prevent and treat AMD.

Application: Prevention and/or treatment of Age-related Macular Degeneration.

Development Status: In vivo mouse studies are in progress to test the effectiveness of the treatment.

Market: Age-related macular degeneration is a leading cause of severe, irreversible vision impairment in developed countries (*http://geteyesmart.org/eyesmart/diseases/amd.cfm*). It is estimated that 1.8 million Americans 40 years and older are affected by AMD and an additional 7.3 million with large drusen (yellow or white deposits under the retina) are at substantial risk of developing AMD. The number of people with AMD is estimated to reach 2.95 million in 2020. AMD is the leading cause of permanent impairment of reading and fine or close-up vision among people aged 65 years and older (*http://www.cdc.gov/visionhealth/basic_information/eye_disorders.htm*).

Inventors: Robert B. Nussenblatt *et al.* (NEI).

Patent Status: U.S. Provisional Application No. 61/429,580 filed 04 Jan 2011 (HHS Reference No. E–099–2010/0–US–01).

Licensing Status: Available for licensing.

Licensing Contact: Jaime M. Greene, M.S.; 301–435–5559; *greenejaime@mail.nih.gov*.

Methods for Inhibiting Proinflammatory Cytokine Expression Using Ghrelin

Description of Invention: Ghrelin, an endogenous ligand for growth hormone secretagogue receptors (GHS–R), is primarily produced by the stomach but also by many other organs systems in the body (including the immune system) serves as a potent circulating orexigen controlling energy expenditure, adiposity and GH secretion. We have discovered that ghrelin exerts anti-inflammatory effects via inhibiting the secretion of both acute and chronic cytokines including IL–1, IL–6, TNF-alpha, IFN-gamma, IL–12 p40, Il–17, various chemokines and CSFs *in vitro* in human and murine cells as well as *in vivo* in murine models of sepsis, inflammation and aging. We also found that ghrelin directly controls human growth hormone and insulin growth factor expression by human immune cells.

Applications: This invention is useful for treatment of various inflammatory disorders including inflammatory bowel disease, Crohn's disease, rheumatoid arthritis, multiple sclerosis, atherosclerosis, endotoxemia and graft-versus-host disease.

Inventors: Vishwa D. Dixit and Dennis D. Taub (NIA).

Relevant Publications

1. Dixit VD, Schaffer EM, Pyle RS, Collins GD, Sakthivel SK, Palaniappan R, Lillard JW Jr, Taub DD. Ghrelin inhibits leptin- and activation-induced proinflammatory cytokine expression by human monocytes and T cells. *J Clin Invest.* 2004 Jul; 114(1):57–66. [PubMed: 15232612] Note: Article highlighted in this issue of JCI. This was also the subject of a *Science SAGE KE* News Focus article—M Leslie. Opposites Detract. *Sci Aging Knowl Environ.* 2004 Jul 14; 28:nf65 [doi: 10.1126/sageke.2004.28.nf65].

2. Dixit VD, Weeraratna AT, Yang H, Bertak D, Cooper-Jenkins A, Riggins GJ, Eberhart CG, Taub DD. Ghrelin and the growth hormone secretagogue receptor constitute a novel autocrine pathway in astrocytoma motility. *J Biol Chem.* 2006

Jun 16; 281(24):16681–16690. [PubMed: 16527811]

3. Dixit VD, Yang H, Sun Y, Weeraratna AT, Smith RG, Taub DD. Ghrelin promotes thymopoiesis during aging. *J Clin Invest.* 2007 Oct; 117(10):2778–2790. [PubMed: 17823656] Note: Article highlighted in this issue of JCI.

4. Yang H, Dixit VD, Patel K, Vandanmagsar B, Collins G, Sun Y, Smith RG, Taub DD. Reduction in hypophyseal growth hormone and prolactin expression due to deficiency in ghrelin receptor signaling is associated with Pit-1 suppression: relevance to the immune system. *Blood Behav Immun.* 2008 Nov; 22(8):1138–1145. [PubMed: 18602461]

5. Dixit VD, Yang H, Cooper-Jenkins A, Giri BB, Patel K, Taub DD. Reduction of T cell-derived ghrelin enhances proinflammatory cytokine expression: implications for age-associated increases in inflammation. *Blood.* 2009 May 21; 113(21):5202–5205. [PubMed: 19324904]

Relevant Reviews

6. Dixit V and Taub DD. Ghrelin and immunity: a young player in an old field. *Exp. Gerontol.* 2005 Nov; 40(11):900–910. [PubMed: 16233968]

7. Taub DD. Novel connections between the neuroendocrine and immune systems: the ghrelin immunoregulatory network. *Vitam Horm.* 2008; 77:325–346. [PubMed: 17983863]

8. Taub DD. Neuroendocrine interactions in the immune system. *Cell Immunol.* 2008 Mar–Apr; 252(1–2):1–6. [PubMed: 18619587] Note: Image from article used on the cover of this issue.

9. Redelman D, Welniak LA, Taub D, Murphy WJ. Neuroendocrine hormones such as growth hormone (GH) and prolactin (PRL) are integral members of the immunological cytokine network. *Cell Immunol.* 2008 Mar–Apr; 252(1–2):111–121. [PubMed: 18313040]

10. Patel K and Taub DD. Role of neuropeptides, hormones, and growth factors in regulating thymopoiesis in middle to old age. *F1000 Biol Rep.* 2009 May 28; 1. pii: 42. [PubMed: 20948643]

11. Taub DD, Murphy WJ, Longo DL. Rejuvenation of the aging thymus: growth hormone-mediated and ghrelin-mediated signaling pathways. *Curr Opin Pharmacol.* 2010 Aug; 10(4):408–424. [PubMed: 20595009]

Patent Status: U.S. Patent Application No. 11/596,310 filed 06 Jun 2008 (HHS Reference No. E–016–2004/0–US–07) and related international applications.

Licensing Status: Available for licensing.

Licensing Contact: Sally H. Hu, PhD, M.B.A.; 301–435–5606; *hus@mail.nih.gov.*

Collaborative Research Opportunity: The National Institute on Aging is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize Methods of Inhibiting Proinflammatory Cytokine Expression Using Ghrelin. Please contact Nikki Guyton at 301–435–3101 or *guytonn@mail.nih.gov* for more information.

Dated: March 29, 2011.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2011–7925 Filed 4–1–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301–496–7057; fax: 301–402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Diagnostic and Prognostic Serum Biomarkers for Cancer Patients Treated With Cancer Vaccines

Description of Technology: Although antibodies are a critical element of the immune response, the role of antibody responses in cancer vaccines is still unknown. Carbohydrate antigens, which are directly or indirectly involved in most types of cancer vaccines, are a class of antigens that has been largely understudied but play a significant role in the immune response of cancer vaccines.

This invention involves the identification of serum biomarkers for cancer that target carbohydrate antigens. The biomarkers are specific sub-populations of serum antibodies present in the serum of patients that bind to various glycan and/or glycoprotein antigens, such as the Forssman antigen.

The biomarkers are useful for (a) predicting a patient's immune responses to a cancer vaccine, (b) measuring the efficacy of a cancer vaccine, and (c) determining the prognosis and long-term survival of cancer patients.

Applications:

- Diagnostic and prognostic test to monitor the progression and long-term survival of cancer patients.
- Predictive indicator of cancer patients' immune response to a cancer vaccine.
- Indicator to monitor the efficacy of a cancer vaccine.

Advantages: The technology is backed by clinical data.

Development Status: Preliminary clinical data; validation studies are ongoing (confirmed findings in two independent patient groups).

Market: Cancer Vaccines are emerging as the forefront treatment regimens for several cancers. Provenge® was recently approved by the FDA for the treatment of prostate cancer. There are several other cancer vaccines in clinical trials.

This technology can be developed into a pioneering test, as no such test to monitor prognosis and efficacy of cancer vaccines currently exists in the market.

Inventors: Jeff Gildersleeve, *et al.* (NCI).

Publications: No publications directly related to this technology.

Patent Status:

- U.S. Provisional Application No. 61/371,537 filed August 6, 2010 (HHS Reference No. E–234–2010/0–US–01).
- U.S. Provisional Application No. 61/443,955 filed February 17, 2011 (HHS Reference No. E–234–2010/1–US–01).

Licensing Status: Available for licensing.

Licensing Contact: Sabarni Chatterjee, M.B.A., PhD; 301–435–5587; *chatterjeesa@mail.nih.gov.*

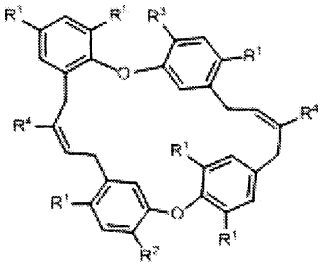
Collaborative Research Opportunity: The Center for Cancer Research, Chemical Biology Laboratory, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize anti-glycan serum antibodies as biomarkers for cancer or

HIV vaccines and/or as prognostic biomarkers. Please contact John Hewes, PhD at 301–435–3121 or *hewesj@mail.nih.gov* for more information.

A New Class of Antibiotics: Naturally-Occurring Chrysophaetins and Their Analogues

Description of Invention: This invention, offered for licensing and commercial development, relates to a new class of naturally occurring antimicrobial compounds called Chrysophaetins, and to their synthetic analogues. Isolated from an alga species, the mechanism of action of these compounds is through the inhibition of bacterial cytoskeletal protein FtsZ, an enzyme necessary for the replication of bacteria. FtsZ is responsible for Z-ring assembly in bacteria, which leads to bacterial cell division. Highly conserved among all bacteria, FtsZ is a very attractive antimicrobial target.

The chrysophaetin exhibits antimicrobial activity against drug resistant bacteria, methicillin-resistant *Staphylococcus aureus* (MRSA) and vancomycin-resistant *Enterococcus faecalis* (VRE), as well as other drug susceptible strains. The general structure of the natural compound is shown below:



BILLING CODE 4140–01–C

The inventors are working on a synthetic route for the compound and analogs. They have made progress and now have two halves of the molecule. These will be further dimerized to produce a synthetic chrysophaentin. It is expected that the analogues will show similar antimicrobial activity to the natural products and will utilize the same mechanism of action.

The market potential for the disclosed compounds is huge ($24 billion in 2008) due to the very limited number of new antibiotics developed in recent decades and the increased epidemic of infectious diseases. In fact, infectious diseases are the leading cause of death worldwide. In the United States alone, more people die from MRSA than from HIV (Journal of the American Medical Association, 2007) and more than 90,000 people die each year from hospital acquired bacterial infections (Centers for Disease Control). A development of new drugs with distinct mechanism of action and efficacy against resistant bacterial strains may therefore be commercially attractive.

Advantages include:

- Structurally distinct antimicrobial compounds.
- Attack newly validated antibacterial targeted protein FtsZ.
- These compounds have a unique mechanism of action which works by inhibiting FtsZ GTPase activity.
- The chrysophaentins can be obtained by synthetic routes through dimerization of their synthetic shorter analogues.

Applications:

- Therapeutic potential for curing bacterial infections in vivo, including for clinical and veterinary applications.
- Antiseptics in hospital settings.
- Since FtsZ is structurally similar, but do not share sequence homology to eukaryotic cytoskeletal protein tubulin, these compounds may have antitumor properties against some cancer types or cell lines.

Development Status:

- Initial isolation and chemical structural characterization using NMR spectroscopy have been conducted.
- Antimicrobial testing against MRSA, *Enterococcus faecium,* and VRE were conducted *in vitro* using a modified disk diffusion assay and microbroth liquid dilution assays.
- MIC_{50} values were determined using a microbroth dilution assay.
- Mode of action was elucidated and Saturation Transfer Difference (STD) NMR was conducted to map the binding epitope of one of these compounds in complex with recombinant FtsZ.
- Other experiments on different areas to further characterize these compounds and their mode of action are currently ongoing.
- Shorter analogues of the natural products have shown to be readily synthesized and synthetic chrysophaentins can be obtained from them by chemical dimerization.

Inventors: Carole A Bewley Clore (NIDDK); Peter Wipf (U. of Pittsburgh).

Relevant Publications:

1. A. Plaza *et al.* Chrysophaentins A–H, antibacterial bisdiarylbutene macrocycles that inhibit the bacterial cell division protein FtsZ. J Am Chem Soc. 2010 Jul 7;132(26):9069–77. [PubMed: 20536175].

2. DJ Haydon *et al.* An inhibitor of FtsZ with potent and selective anti-staphylococcal activity. Science. 2008 Sept 19; 321(5896):1673–1675. [PubMed: 18801997].

3. NR Stokes *et al.* Novel inhibitors of bacterial cytokinesis identified by a cell-based antibiotic screening assay. J Biol Chem. 2005 Dec 2; 280(48):39709–39715. [PubMed: 16174771].

4. J Wang *et al.* Discovery of small molecule that inhibits cell division by blocking FtsZ, a novel therapeutic target of antibiotics. J Biol Chem. 2003 Nov 7; 278(45):44424–44428. [PubMed: 12952956].

5. P Domadia *et al.* Berberine targets assembly of Escherichia coli cell division protein FtsZ. Biochemistry. 2008 Mar 11; 47(10):3225–3234. [PubMed: 18275156]

6. P Domadia *et al.* Inhibition of bacterial cell division protein FtsZ by cinamaldehyde. Biochem Pharmacol. 2007 Sep 15:74(6):831–840. [PubMed: 17662960]

7. S Urgaonkar *et al.* Synthesis of antimicrobial natural products targeting FtsZ: (+/−)-dichamanetin and (+/−)-2‴-hydroxy-5″-benzylisouvarinol-B. Org Lett. 2005 Dec 8;7(25):5609–5612. [PubMed: 16321003].

Patent Status:

- PCT Application No. PCT/US2011/026220 filed February 25, 2011 (HHS Reference No. E–116–2010/0–PCT–02).
- U.S. Provisional Application No. 61/446,978 filed February 25, 2011 (HHS Reference No. E–115–2011/0–US–01).

Licensing Status: Available for licensing.

Licensing Contacts:

- Uri Reichman, PhD, MBA; 301–435–4616; *UR7a@nih.gov.*
- John Stansberry PhD; 301–435–5236; *js852e@nih.gov.*

Collaborative Research Opportunity: The National Institute of Diabetes and Digestive and Kidney Diseases, Laboratory of Bioorganic Chemistry, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize the chrysophaentin antibiotics. Please contact Marguerite J. Miller at 301–451–3636 or *millermarg@niddk.nih.gov* for more information.

Dated: March 29, 2011.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2011–7921 Filed 4–1–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development, Special Emphasis Panel, Origins and Mechanisms of Categorization.

Date: April 27, 2011.

Time: 11 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, 5B01, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Marita R. Hopmann, PhD, Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, 301–435–6911, *hopmannm@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS).

Dated: March 29, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–7924 Filed 4–1–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: HIV/AIDS Research.

Date: April 12–13, 2011.

Time: 9 a.m. to 10 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Mary Clare Walker, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5208, MSC 7852, Bethesda, MD 20892, (301) 435–1165, *walkermc@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Integrative Neuroscience.

Date: April 26–27, 2011.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Christine L. Melchior, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892, (301) 435–1713, *melchioc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Immune Mechanism.

Date: April 28, 2011.

Time: 12:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Scott Jakes, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4198, MSC 7812, Bethesda, MD 20892, 301–495–1506, *jakesse@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 29, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–7923 Filed 4–1–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center on Minority and Health Disparities; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center on Minority Health and Health Disparities Special Emphasis Panel, NIMHD Conference Grant Application (R13) Review.

Date: April 7, 2011,

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Maryline Laude-Sharp, PhD, Scientific Review Officer, National Institute on Minority Health and Health Disparities, 6707 Democracy Boulevard, Suite 800, Bethesda, MD 20892, (301) 451–9536, *mlaudesharp@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Dated: March 29, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–7919 Filed 4–1–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Fogarty International Center; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Fogarty International Center Advisory Board.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the Discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Fogarty International Center Advisory Board.

Date: May 25–26, 2011.

Closed: May 25, 2011, 2 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Building 31, 31 Center Drive, C Wing, Room B2C07, Bethesda, MD 20892.

Open: May 26, 2011, 9 a.m. to 3 p.m.

Agenda: Discussion topics to include communications, policy research and public-private partnerships.

Place: National Institutes of Health, Lawton Chiles International House, Bethesda, MD 20892.

Contact Person: Robert Eiss, Public Health Advisor, Fogarty International Center, National Institutes of Health, 31 Center Drive, Room B2c02, Bethesda, MD 20892, (301) 496–1415, *EISSR@MAIL.NIH.GOV.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.nih.gov/fic/about/advisory.html,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: March 29, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–7918 Filed 4–1–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Project: Strategic Prevention Framework State Incentive Grant (SPF SIG) Program (OMB No. 0930–0279) —Revision

SAMHSA's Center for Substance Abuse Prevention (CSAP) is responsible for the evaluation instruments of the Strategic Prevention Framework State Incentive Grant (SPF SIG) Program. The program is a major initiative designed to: (1) Prevent the onset and reduce the progression of substance abuse, including childhood and underage drinking; (2) reduce substance abuse related problems; and (3) build prevention capacity and infrastructure at the State-, territorial-, Tribal- and community-levels.

Five steps comprise the SPF:

Step 1: Profile population needs, resources, and readiness to address the problems and gaps in service delivery.

Step 2: Mobilize and/or build capacity to address needs.

Step 3: Develop a comprehensive strategic plan.

Step 4: Implement evidence-based prevention programs, policies, and practices and infrastructure development activities.

Step 5: Monitor process, evaluate effectiveness, sustain effective programs/activities, and improve or replace those that fail.

An evaluation team is currently implementing a multi-method, quasi-experimental evaluation of the first two Strategic Prevention Framework State Incentive Grant (SPF SIG) cohorts receiving grants in FY 2004 and FY 2005. A second evaluation is being conducted with the SPF SIG Cohorts III, IV and V. This notice invites comments for revision to the protocol for the ongoing cross-site evaluations of the Strategic Prevention Framework State Incentive Grant (SPF SIG) (OMB No. 0930–0279) which expires on 11/30/12. This revision includes three parts:

(1) Continuation of the use of the previously approved two-part Community Level Instrument (CLI Parts I and II) for Cohorts I and II and the use of an instrument to assess the sustainability of grantee implementation and infrastructure accomplishments which is a modification of an instrument used in an earlier phase of the evaluation.

(2) The addition of one more Cohort (Cohort V) which will use the previously approved SPF SIG cross-site evaluation instruments. All three instruments are modified versions of data collection protocols used by Cohorts I and II and have received OMB approval (OMB No. 0930–0279). The three instruments are:

a. A Grantee-Level SPF Implementation Instrument,

b. A Grantee-Level Infrastructure Instrument, and

c. A two-part Community-Level SPF Implementation Instrument.

(3) Recalculation of burden numbers for Cohort IV to replace estimates that had been based on 20 grantees to reflect the 25 grantees actually funded.

An additional Cohort III, IV, and V evaluation component (*i.e.,* participant-level NOMs outcomes) is also included in this submission as part of the comprehensive evaluation, however, no associated burden from this evaluation activity is being imposed and therefore clearance to conduct the activities is not being requested. Specifically, Cohort III, IV, and V SPF SIG grantees have been included in the currently OMB approved umbrella NOMs application (OMB No. 0930–0230) covering the collection of participant-level NOMs

outcomes by all SAMHSA/CSAP grantees.

Every attempt has been made to make the evaluation for Cohorts III, IV, and V comparable to Cohorts I and II. However, initial resource constraints for the Cohorts III, IV, and V evaluation have necessitated some streamlining of the original evaluation design. Since the ultimate goal is to fund all eligible jurisdictions, there are no control groups at the grantee level for Cohorts III, IV, and V. The primary evaluation objective is to determine the impact of SPF SIG on the reduction of substance abuse related problems, on building State prevention capacity and infrastructure, and preventing the onset and reducing the progression of substance abuse, as measured by the SAMHSA National Outcomes Measures (NOMs). Data collected at the grantee, community, and participant levels will provide information about process and system outcomes at the grantee and community levels as well as context for analyzing participant-level NOMs outcomes.

Grantee-Level Data Collection

Cohort I and II Continuation

The Sustainability Interview will be conducted during Phase II of the evaluation in 2011 (Cohort I) and 2012 (Cohort II). The interview guide is adapted from the Phase I instruments (OMB No. 0930–0279) and focuses on State-level prevention capacity and infrastructure in relation to the five steps of the SPF process: needs assessment, capacity building, strategic planning, implementation of evidence-based programs, policies, and practices (EBPPPs), and evaluation/monitoring. The interviews will be aimed at understanding the status of the prevention infrastructure at the time of the interview, whether the status has changed since the previous rounds of interviews (conducted in 2007 and 2009), and whether the SPF SIG had any influence on changes that might have occurred.

Cohort III, IV, and V Revision

Two Grantee-level Instruments (GLI) were developed to gather information about the infrastructure of the grantee's overall prevention system and collect data regarding the grantee's efforts and progress in implementing the Strategic Prevention Framework 5-step process. Both instruments are modified versions of the grantee-level interview protocols used in the SPF SIG Cohort I and II Cross-Site Evaluation and have received OMB clearance for use with Cohorts III and IV (OMB No. 0930–0279). The total burden imposed by the original interview protocols has been reduced by restructuring the format of the original protocol, deleting several questions and replacing the majority of open-ended questions with multiple-choice-response questions. The *Infrastructure Instrument* will capture data to assess infrastructure change and to test the relationship of this change to outcomes. The *Strategic Prevention Framework Implementation Instrument* will be used to assess the relationship between SPF implementation and change in the NOMs. Information for both surveys will be gathered by the grantees' evaluators twice over the life of the SPF SIG award.

Based on the current 16 grantees funded in Cohort III, and 25 funded in Cohort IV, and 10 funded in Cohort V, the estimated annual burden for grantee-level data collection is displayed below in Table 1. The burden estimates for the GLIs are based on the experience in the Cohort I and II SPF SIG evaluation as reported in the original OMB submission (OMB No. 0930–0279), less the considerable reduction in length of these instruments implemented by the Cohort III, IV, and V evaluation team.

Community-Level Data Collection (Continuation and Revision)

Cohort I and II Continuation

The Community-level Instrument (CLI) is a two part, Web-based survey for capturing information about SPF SIG implementation at the community level (originally submitted as an addendum to OMB No. 0930–0279). Part I of this instrument was developed to assess the progress of communities as they implement the Strategic Prevention Framework (SPF), and Part II was developed to gather descriptive information about the specific interventions being implemented at the community level and the populations being served including the gender, age, race, ethnicity, and number of individuals in target populations. Each SPF SIG funded community will complete a separate Part II form for each intervention they implement.

The CLI (Parts I and II) was designed to be administered two times a year (every six months) over the course of the SPF SIG Cohort I and II initiative. Four rounds of data were collected under the current OMB approval period and the Cohorts I and II cross-site evaluation team plans to collect additional rounds once this request for a revision is approved. Data from this instrument will allow CSAP to assess the progress of the communities in their implementation of both the SPF and prevention-related interventions funded under the initiative. The data may also be used to assess obstacles to the implementation of the SPF and prevention-related interventions and facilitate mid-course corrections for communities experiencing implementation difficulties.

The estimated annual burden for community-level data collection is displayed below in Table 1. Note that the total burden reflects the 443 communities that have received SPF funds from their respective Cohort I and Cohort 2 States. Burden estimates are based on pilot respondents' feedback as well as the experience of the survey developers reported in the original OMB submission (OMB No. 0930–0279). Additionally, an individual community's burden may be lower than the burden displayed in Table 1 because all sections of the Community-level Instrument (parts I and II) may not apply for each reporting period as community partners work through the SPF steps and only report on the step-related activities addressed. Note also that some questions will be addressed only once and the responses will be used to pre-fill subsequent surveys.

Cohort III, IV, and V (Revision)

The Community-Level Instrument to be completed by Cohort III, IV, and V funded subrecipient communities is a modified version of the one in use in the SPF SIG Cohorts I and II Cross-Site Evaluation and use of these modified instruments has been approved by OMB for Cohorts III and IV (OMB No. 0930–0279). The total burden imposed by the original instrument was reduced by reorganizing the format of the original instrument, optimizing the use of skip patterns, and replacing the majority of open-ended questions with multiple-choice-response questions.

Part I of the instrument will gather information on the communities' progress implementing the five SPF SIG steps and efforts taken to ensure cultural competency throughout the SPF SIG process. Subrecipient communities receiving SPF SIG awards will be required to complete Part I of the instrument annually. Part 2 will capture data on the specific prevention intervention(s) implemented at the community level. A single prevention intervention may be comprised of a single strategy or a set of multiple strategies. A Part II instrument will be completed for each prevention intervention strategy implemented during the specified reporting period. Specific questions will be tailored to match the type of prevention intervention strategy implemented (*e.g.,*

Prevention Education, Community-based Processes, and Environmental). Information collected on each strategy will include date of implementation, numbers of groups and participants served, frequency of activities, and gender, age, race, and ethnicity of population served/affected. Subrecipient communities' partners receiving SPF SIG awards will be required to update Part II of the instrument a minimum of every six months.

The estimated annual burden for specific segments of the community-level data collection is displayed in Table 1. The burden estimates for the CLIs are based on the experience in the Cohort I and II SPF SIG evaluation as reported in the original OMB submission (OMB No. 0930–0279), less the considerable reduction in length of these instruments implemented by the Cohort III, IV, and V evaluation team. The total burden assumes an average of 15 community-level subrecipients per grantee (n=51 Grantees) for a total of 765 community respondents, annual completion of the CLI Part I, a minimum of two instrument updates per year for the CLI Part II, and an average of three distinct prevention intervention strategies implemented by each community during a 6-month period. Additionally, some questions will be addressed only once and the responses will be used to pre-fill subsequent updates.

Participant-Level Data Collection (Cohort III, IV, and V—Continuation)

Participant-level change will be measured using the CSAP NOMs Adult and Youth Programs Survey Forms already approved by OMB (OMB No. 0930–0230). Subrecipient communities will have the opportunity to select relevant measures from the CSAP NOMs Adult and Youth Programs Survey Forms based on site-specific targeted program outcomes and may voluntarily select additional outcome measures that are relevant to their own initiatives. Cohort III, IV, and V SPF SIG grantees have been included in the currently OMB approved umbrella NOMs application (OMB No. 0930–0230) covering all SAMHSA/CSAP grantees, therefore no additional burden for this evaluation activity is being imposed and clearance to conduct the activities is not being requested.

Total Estimates of Annualized Hour Burden

Estimates of total and annualized reporting burden for respondents by evaluation cohort are displayed below in Table 1. Overall summaries appear in Table 2. The estimated average annual burden of 5,773 hours is based on the completion of the Community Level-Instrument (CLI Parts I and II) and Sustainability Interview for Cohorts I and II, and the Grantee-level Instruments (GLI) and the Community-Level Instrument (CLI) for Cohorts III, IV, and V.

TABLE 1—ESTIMATES OF ANNUALIZED HOUR BURDEN TO RESPONDENTS

Instrument type	Respondent	Burden per response (hrs.)	No. of respondents	No. of responses per respondent	Total burden (hrs.)	Hourly wage cost	Total hour cost
Cohorts 1 and 2 Grantee-Level Burden							
CLI Grantee Level Input	Grantee	1	26	2	52.0	$42.00	$2,184
Sustainability Interview	Grantee	1.5	26	1	39.0	42.00	1,638
Total Burden	Grantee	2.5	26	3	91.0	42.00	3,822
Average Annual Burden Over 4 Reporting Periods	Grantee		26		22.8	42.00	956
Cohorts 1 and 2 Community-Level Burden							
CLI Part I	Community	2.17	443	2	1,922.6	32.00	61,523
CLI Part II	Community	2.17	443	8	7,690.5	32.00	246,095
Review of Past Responses	Community	2.5	443	2	2,215.0	32.00	70,880
Total Burden	Community	6.84	443	12	11,828.1	32.00	378,498
Average Annual Burden Over 4 Reporting Periods	Community		443		2,957.0	32.00	94,625
Grantee-Level Burden Cohort 3							
GLI Infrastructure Instrument	Grantee	2.50	16	1	40.0	42.00	1,680
GLI Implementation Instrument	Grantee	2.25	16	1	36.0	42.00	1,512
CLI Part I, 1—20: Community Contact Information—Updates.	Grantee	0.25	16	1	4.0	42.00	168
Total Burden	Grantee				80.0	42.00	3,360
Average Annual Burden Over 4 Reporting Periods	Grantee				20.0	42.00	840
Community-Level Burden Cohort 3							
CLI Part I, 21–172: Community SPF Activities—Updates.	Community	0.75	240	1	180	32.00	5,760
CLI Part II—Updates	Community	0.5	240	6	720	32.00	23,040
Total burden	Community				900	32.00	28,800
Average Annual Burden Over 4 Reporting Periods	Community				225	32.00	7,200
Grantee-Level Burden Cohort 4							
GLI Infrastructure Instruments	Grantee	2.50	25	1	62.5	42.00	2,625
GLI Implementation Instruments	Grantee	2.25	25	2	112.5	42.00	4,725
CLI Part I, 1–20: Community Contact Information—Initialization.	Grantee	1.5	25	1	37.5	42.00	1,575
CLI Part I, 1–20: Community Contact Information—Updates.	Grantee	0.25	25	3	18.75	42.00	787
Total Burden	Grantee				231.25	42.00	9,712
Average Annual Burden Over 4 Reporting Periods	Grantee				57.8	42.00	2,428
Community-Level Burden Cohort 4							

TABLE 1—ESTIMATES OF ANNUALIZED HOUR BURDEN TO RESPONDENTS—Continued

Instrument type	Respondent	Burden per response (hrs.)	No. of respondents	No. of responses per respondent	Total burden (hrs.)	Hourly wage cost	Total hour cost
CLI Part I, 21–172: Community SPF Activities—Initialization.	Community	3	375	1	1,125	32.00	36,000
CLI Part II—Initialization	Community	0.75	375	6	1,687.5	32.00	54,000
CLI Part I, 21–172: Community SPF Activities—Updates.	Community	0.75	375	3	843.75	32.00	27,000
CLI Part II—Updates	Community	0.5	375	18	3,375	32.00	108,000
Total burden	Community	.....	.....	.....	7031.25	32.00	225,000
Average Annual Burden Over 4 Reporting Periods	Community	.....	.....	.....	1,757.8	32.00	56,250
Grantee-Level Burden Cohort 5							
GLI Infrastructure Instruments	Grantee	2.5	10	2	50	42.00	2,100
GLI Implementation Instruments	Grantee	2.25	10	2	45	42.00	1,890
CLI Part I, 1–20: Community Contact Information—Initialization.	Grantee	1.5	10	1	15.0	42.00	630
CLI Part I, 1–20: Community Contact Information—Updates.	Grantee	0.25	10	3	7.5	42.00	315
Total Burden	Grantee	.....	.....	.....	117.5	42.00	4,935
Average Annual Burden Over 4 Reporting Periods	Grantee ...	.....	.....	.....	29.4	42.00	1,234
Community-Level Burden Cohort 5							
CLI Part I, 21–172: Community SPF Activities—Initialization.	Community	3	150	1	450	32.00	14,400
CLI Part II—Initialization	Community	0.75	150	6	675	32.00	21,600
CLI Part I, 21–172: Community SPF Activities—Updates.	Community	0.75	150	3	337.5	32.00	10,800
CLI Part II—Updates	Community	0.5	150	18	1,350	32.00	43,200
Total burden	Community	.....	.....	.....	2,812.5	32.00	90,000
Average Annual Burden Over 4 Reporting Periods	Community	.....	.....	.....	703.12	32.00	22,500

TABLE 2—ANNUALIZED SUMMARY TABLE

	Respondent	Burden per response (hrs.)	No. of respondents	No. of responses	Total burden (hrs.)	Hourly wage cost	Total hour cost
Total Burden All Cohorts							
Average Annual Burden	Grantee ...	1.44	77	90.25	129.9	$42.00	$5,455
	Community	1.04	1208	5,424	5,643	32.00	180,576
	Overall	1.05	1285	5,514.25	5,773	.....	186,031

Written comments and recommendations concerning the proposed information collection should be sent by May 4, 2011 to: SAMHSA Desk Officer, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, respondents are encouraged to submit comments by fax to: 202–395–7285.

Dated: March 25, 2011.

Elaine Parry,

Director, Office of Management, Technology and Operations.

[FR Doc. 2011–7875 Filed 4–1–11; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5487–N–08]

Notice of Proposed Information Collection for Public Comment; HOPE VI Public Housing Programs: Funding and Program Data Collection

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* June 3, 2011.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name/or OMB Control number and should be sent to: Colette Pollard., Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW., Room 4160, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or e-mail Ms. Pollard at *Colette_Pollard@hud.gov.* Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339. (Other than the HUD USER information line and TTY

numbers, telephone numbers are not toll-free.)

FOR FURTHER INFORMATION CONTACT: Arlette Mussington, Office of Policy, Programs and Legislative Initiatives, PIH, Department of Housing and Urban Development, 451 7th Street, SW., (L'Enfant Plaza, Room 2206), Washington, DC 20410; telephone 202–402–4109 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; *e.g.,* permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: HOPE VI program.

OMB Control Number: 2577–0208.

Description of the need for the information and proposed use: Section 24 of the U.S. Housing Act of 1937, as added by section 535 of the Quality Housing and Work Responsibility Act of 1998 (Pub. L. 105–276, 112 Stat. 2461, approved October 21, 1998) and revised by the HOPE VI Program Reauthorization and Small Community Main Street Rejuvenation and Housing Act of 2003 (Public. L. 108–186, 117 Stat. 2685, approved December 16, 2003), establishes the HOPE VI program for the purpose of making assistance available on a competitive basis to public housing agencies (PHAs) in improving the living environment for public housing residents of severely distressed public housing projects through the demolition, rehabilitation, reconfiguration, or replacement of severely distressed public housing projects (or portions thereof); in revitalizing areas in which public housing sites are located, and contributing to the improvement of the surrounding community; in providing housing that avoids or decreases the concentration of very low-income families; and in building sustainable communities. In addition, the HOPE VI Program Reauthorization and Small Community Main Street Rejuvenation and Housing Act of 2003 added to the HOPE VI program the purpose of making assistance available on a competitive basis to small units of local government to develop affordable housing as part of Main Street rejuvenation projects. The program authorization was renewed by the Consolidated Appropriations Act, 2010 (Pub. L. 111–117, approved December 16, 2009), which extends the program until September 30, 2011. Under this requirement, the Department only has a few months to award and obligate the 2011 funds or they will be returned to the Treasury.

These information collections are required in connection with the annual publication in the **Federal Register** of Notices of Funding Availability (NOFAs), contingent upon available funding and authorization, which announce the availability of funds provided in annual appropriations for HOPE VI Revitalization, Demolition grants, and HOPE VI Main Street grants.

Eligible public housing agencies (PHAs) (for HOPE VI Revitalization and Demolition) and eligible local units of government (for HOPE VI Main Street) interested in obtaining HOPE VI grants are required to submit applications to HUD, as explained in each program NOFA. The information collection conducted in the applications enables HUD to conduct a comprehensive, merit-based selection process in order to identify and select the applications to receive funding. With the use of HUD-prescribed forms, the information collection provides HUD with sufficient information to approve or disapprove applications.

Applicants that are awarded HOPE VI grants are required to report on a quarterly basis on the sources and uses of all amounts expended for revitalization, demolition, or Main Street activities. HOPE VI Revitalization grantees use a fully-automated, Internet-based process for the submission of quarterly reporting information. HUD reviews and evaluates the collected information and uses it as a primary tool with which to monitor the status of HOPE VI Revitalization projects and the HOPE VI Revitalization program.

Agency form numbers: HUD–52774, HUD–52780, HUD–52785, HUD–52787, HUD–52798, HUD–52790, HUD–52797, HUD–52799, HUD–52800, HUD–52825–A, HUD–52860–A, HUD–52861, HUD–53001–A, HUD 96010, and HUD 96011.

Members of affected public: Public Housing Agencies.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

For HOPE VI Revitalization Application: 30 respondents, once annually, 195.5 hours average per response results in a total annual reporting burden of 5,865.0 hours.

For HOPE VI Demolition Applications: 34 respondents, once annually, 40.25 hours average per response results in a total annual reporting burden of 1,368.50 hours.

For HOPE VI Main Street Applications: 15 respondents, once annually, 48.67 hours average per response results in a total annual reporting burden of 675.0 hours.

For HOPE VI Revitalization Quarterly Reporting: 207 respondents, 4 times annually, 20 hours average per response results in a total annual reporting burden of 16,560 hours.

Grand total: These information collections, along with other Non-NOFA information collection items required in connection with the HOPE VI program including budget updates, supportive services and relocation plans, and cost certificates result in an annual total reporting burden of 26,515.5 hours.

Status of the proposed information collection: Extension of a Currently Approved Collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: March 24, 2011.

Merrie Nichols-Dixon,

Deputy Director for Office of Policy, Program, and Legislative Initiatives.

[FR Doc. 2011–7842 Filed 4–1–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5480–N–31]

Notice of Submission of Proposed Information Collection to OMB; Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of

Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The RROF/C is used to document compliance with the National Environmental Policy Act (NEPA) and the related environmental statutes, executive orders, and authorities in accordance with the procedures identified in 24 CFR part 58. Recipients certify compliance and make request for release of funds.

DATES: Comments Due Date: May 4, 2011.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0494) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. E-mail: *OIRA_Submission@omb.eop.gov* fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Colette Pollard., Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Colette Pollard at *Colette.Pollard@hud.gov.* or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities.

OMB Approval Number: 2506–0087.

Form Numbers: HUD–7015.15.

Description of the Need for the Information and its Proposed Use:

The RROF/C is used to document compliance with the National Environmental Policy Act (NEPA) and the related environmental statutes, executive orders, and authorities in accordance with the procedures identified in 24 CFR part 58. Recipients certify compliance and make request for release of funds.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	×	Hours per response	Burden hours
Reporting Burden	18,785	1		0.60	11,271

Total Estimated Burden Hours: 11,271.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: March 29, 2011.

Colette Pollard,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2011–7837 Filed 4–1–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5487–N–09]

Notice of Proposed Information Collection for Public Comment; Public Housing Admissions/Occupancy Policy

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comment Due Date:* June 3, 2011.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name/or OMB Control number and should be sent to: Colette Pollard, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW., Room 4160, Washington, DC 20410–5000; telephone 202.402.3400 (this is not a toll-free number) or e-mail Ms. Pollard at *Colette_Pollard@hud.gov.* Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339. (Other than the HUD USER information line and TTY numbers, telephone numbers are not toll-free.)

FOR FURTHER INFORMATION CONTACT: Arlette Mussington, Office of Policy, Programs and Legislative Initiatives, PIH, Department of Housing and Urban Development, 451 7th Street, SW., (L'Enfant Plaza, Room 2206), Washington, DC 20410; telephone 202–402–4109, (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended). This Notice is submitting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility and clarity of information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; *e.g.* permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Admission to, and Occupancy of Public Housing.

OMB Control Number: 2577–0220.

Description of the need for the information and proposed use: The Statute requires HUD to ensure the low-income character of public housing projects and to assure that sound management practices will be followed in the operation of the project. Public Housing Agencies (PHAs) enter into an Annual Contribution Contract (ACC) with HUD to assist low-income tenants. HUD regulations, part 960, provide policies and procedures for PHAs to administer the low-income housing program for admission and occupancy. PHAs must develop and keep on file the admission and occupancy policies and the PHA must include in the *annual plan* or supporting documents the number and location of the units to be occupied by police officers, and the terms and conditions of their tenancies; and a statement that such occupancy is needed to increase security for public housing residents. PHA compliance will support the statute; and HUD can ensure that the low-income character of the project and sound management practices will be followed.

Agency form number, if applicable: Not applicable.

Members of affected public: State, Local or Tribal Government.

Estimation of the total number of hours needed to prepare the information collection including respondents: The estimated number of respondents is 3,278 annually with one response per respondent. The average number for each response is 60 hours, for a total burden of 196,680.

Status of the proposed information collection: Extension of currently approved collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, as amended.

Dated: March 24, 2011.

Merrie Nichols-Dixon,

Deputy Director, Office of Policy, Program and Legislative Initiatives.

[FR Doc. 2011–7821 Filed 4–1–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5486–N–08]

Notice of Proposed Information Collection; Comment Request; National Resource Bank

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date: June 3, 2011.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, Room 9120 or the number for the Federal Information Relay Service (1–800–877–8339).

FOR FURTHER INFORMATION CONTACT: Erika Poethig, Deputy Assistant Secretary for Policy Development, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 402–5613 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: National Resource Bank.

OMB Control Number, if applicable: None.

Description of the need for the information and proposed use: This is a new data collection for application and reporting information related to the proposed National Resource Bank. The U.S. Department of Housing and Urban Development Consolidated Appropriations Act, 2010 (Pub. L. 111–117 approved December 16, 2009) funds technical assistance for HUD programs under the Transformation Initiative (TI) account. The National Resource Bank will provide cities tailored technical support through a "one-stop-shop" of national experts with wide ranging skills including fiscal reforms, repurposing land use, and business cluster and job market analysis, to name a few.

Agency form numbers, if applicable: SF–424, SF–424supp, SF–LLL, SF 269a, HUD–424CB, HUD–424CBW, HUD–2880, HUD–40040, HUD 40044, and a narrative response to application rating factors.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The number of burden hours is 2,914. The number of respondents is 30, the frequency of response is 2.2, and the burden hour per response is 212.

Status of the proposed information collection: This is a new collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: March 23, 2011.

Raphael W. Bostic,

Assistant Secretary for Policy Development and Research.

[FR Doc. 2011–7835 Filed 4–1–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5513–N–01]

Notice of Availability of a Final Environmental Impact Statement for the Sunset Area Community Planned Action, City of Renton, WA

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: The Department of Housing and Urban Development (HUD) gives this notice to the public, agencies and Indian Tribes on the availability for public review and comment of the Final Environmental Impact Statement (Final EIS) for the redevelopment of the Sunset Terrace public housing community in Renton, WA. HUD gives this notice on behalf of the City of Renton acting as the Responsible Entity for compliance with the National Environmental Policy Act (NEPA). Pursuant to the authority granted by section 26 of the U.S. Housing Act of 1937 (42 U.S.C. 1437x) in connection with projects assisted under section 9 of that Act (42 U.S.C. 1437g), the City of Renton has assumed responsibility for compliance with NEPA (42 U.S.C. 4321) in accordance with 24 CFR 58.1 and 58.4, and is the lead agency for compliance with the Washington State Environmental Policy Act (SEPA, RCW 43.21C). The EIS is a joint NEPA and SEPA document intended to satisfy requirements of Federal and State environmental statutes. A NEPA Record of Decision (ROD) will be issued after the 30-day availability period. This notice is given in accordance with the Council on Environmental Quality regulations at 40 CFR parts 1500–1508.

DATES: The NEPA/SEPA Final EIS will be available until May 2, 2011.

FOR FURTHER INFORMATION CONTACT: Erika Conkling, AICP, Senior Planner, City of Renton Department of Community and Economic Development, 1055 S. Grady Way, Renton, WA 98057, 425–430–6578 (voice) 425–430–7300 (fax), or e-mail: *econkling@rentonwa.gov*.

Copies of the Final EIS are available at the above address for reference, and copies may be purchased for the cost of reproduction. The Final EIS is also available on the Internet and can be viewed or downloaded at: *http://rentonwa.gov/business/default.aspx?id=2060*.

SUPPLEMENTARY INFORMATION: The proposal includes redevelopment of the Renton Housing Authority's (RHA's) Sunset Terrace public housing community, a 7.3-acre property with 100 existing units contained in 27 buildings that are 50-year-old, two-story structures, located at the intersection of NE. Sunset Boulevard and Harrington Avenue NE. RHA also owns additional vacant land (approximately 3 acres with two dwelling units) along Edmonds Avenue NE., Glenwood Avenue NE., and Sunset Lane NE., and intends to purchase additional property adjacent to Sunset Terrace, along Harrington Avenue NE. (which contains about 8 dwellings); RHA plans to incorporate these additional properties into the Sunset Terrace redevelopment for housing and associated services. The Sunset Terrace public housing community units, facilities, and infrastructure are antiquated and the project is dilapidated.

Conceptual plans propose redevelopment of Sunset Terrace and adjacent properties with mixed-income, mixed-use residential and commercial space and public amenities. The redevelopment would include a 1-to-1 unit replacement for all 100 existing public housing units. All existing public housing units will be replaced either on-site or off-site, at locations within the existing Sunset Terrace site, and the Planned Action Study Area within the City; no net loss of low income housing units would occur. The project will require relocation of all existing residents and RHA is developing a relocation plan. It is expected that, with the Sunset Terrace property and associated properties owned or purchased by RHA, up to 479 additional new units could be constructed with a portion of the total units being public, affordable, and market rate. Public amenities would be integrated with the residential development and could include the following: a community gathering space or "third place;" civic facilities such as a community center, senior center, and/or public library space; a new park/open space; retail shopping and commercial space; and green infrastructure.

Sunset Terrace's redevelopment provides the opportunity to evaluate the neighborhood as a whole and determine what future land use redevelopment is possible and what public service and infrastructure improvements should be made in order to make this a more vibrant and attractive community for residents, businesses and property owners. The EIS addresses the primary proposal of the Sunset Terrace area redevelopment as well as evaluate secondary proposals such as neighborhood redevelopment and supporting services and infrastructure improvements.

The City of Renton is also proposing to adopt a Planned Action Ordinance pursuant to SEPA. A Planned Action Ordinance, if adopted, would not require future SEPA threshold determinations or EISs for future projects that are consistent with EIS assumptions and mitigation measures.

The Final EIS completes the environmental review process by revising or clarifying portions of the analysis and responding to public and agency comments on the Draft EIS. The Final EIS also introduces and reviews another alternative, called the Preferred Alternative, which is within the range of alternatives studied in the Draft EIS. The City analyzed three alternatives (Alternatives 1, 2, and 3) as part of the Draft EIS to determine its Preferred Alternative. The Preferred Alternative is evaluated in the Final EIS. All four alternatives are described below.

Alternative 1; No Action. RHA would develop affordable housing on two vacant properties, but it would not redevelop the Sunset Terrace public housing property. Very limited public investment would be implemented (*e.g.,* some community services but no NE Sunset Boulevard or drainage improvements), resulting in lesser redevelopment across the Planned Action study area. A Planned Action would not be designated. The No Action Alternative is required to be studied under NEPA and SEPA.

Alternative 2. This alternative represents a moderate level of growth in the Planned Action Study Area based on investment in mixed-income housing and mixed uses in the Potential Sunset Terrace Redevelopment Subarea, targeted infrastructure and public services throughout the Planned Action study area, and adoption of a Planned Action Ordinance.

Alternative 3. This alternative represents the highest level of growth in the Planned Action study area, based on investment in the Potential Sunset Terrace Redevelopment Subarea with a greater number dwellings developed in a mixed-income, mixed-use style, major public investment in study area infrastructure and services, and adoption of a Planned Action Ordinance.

Preferred Alternative. This alternative represents neighborhood growth similar to and slightly less than Alternative 3 in the Planned Action Study Area, based on investment in the Potential Sunset Terrace Redevelopment Subarea with a moderate number dwellings developed in a mixed-income, mixed-use style oriented around a larger park space and loop road, major public investment in study area infrastructure and services, and adoption of a Planned Action Ordinance.

Questions may be directed to the individual named above under the heading of **FOR FURTHER INFORMATION CONTACT**.

Dated: March 30, 2011.

Mercedes M. Márquez,

Assistant Secretary for Community Planning and Development.

[FR Doc. 2011–7945 Filed 4–1–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Nominations of New Members to the Invasive Species Advisory Committee (ISAC)

AGENCY: Office of the Secretary, National Invasive Species Council.

ACTION: Request for Nominations for the Invasive Species Advisory Committee.

SUMMARY: The U.S. Department of the Interior, on behalf of the interdepartmental National Invasive Species Council, proposes to appoint new members to the Invasive Species Advisory Committee (ISAC). The Secretary of the Interior, acting as administrative lead, is requesting nominations for qualified persons to serve as members of the ISAC.

DATES: Nominations must be postmarked by June 3, 2011.

ADDRESSES: Nominations should be sent to Lori Williams, Executive Director, National Invasive Species Council (OS/NISC), Regular Mail: 1849 C Street, NW. (MS 1201 EYE), Washington, DC 20240; Express Mail: 1201 Eye Street, NW., 5th Floor, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Kelsey Brantley, Program Specialist and ISAC Coordinator, at (202) 513–7243, fax: (202) 371–1751, or by e-mail at *Kelsey_Brantley@ios.doi.gov.*

SUPPLEMENTARY INFORMATION:

Advisory Committee Scope and Objectives

The purpose and role of the ISAC are to provide advice to the National Invasive Species Council (NISC), as authorized by Executive Order 13112, on a broad array of issues including preventing the introduction of invasive species, providing for their control, and minimizing the economic, ecological, and human health impacts that invasive species cause. NISC is Co-chaired by the Secretaries of the Interior, Agriculture, and Commerce, and is charged with providing coordination, planning and leadership regarding invasive species issues. Pursuant to the Executive Order, NISC developed a 2008–2012 National Invasive Species Management Plan (Plan), which is available on the Web at *http://www.invasivespecies.gov/main_nav/mn_NISC_ManagementPlan.html.* NISC is responsible for effective implementation of the Plan including any revisions of the Plan, and also coordinates Federal agency activities concerning invasive species; encourages planning and action at local, tribal, State, regional and ecosystem-based levels; develops recommendations for international cooperation in addressing invasive species; facilitates the development of a coordinated network to document, evaluate, and monitor impacts from invasive species; and facilitates establishment of an information-sharing system on invasive species that utilizes, to the greatest extent practicable, the Internet.

The role of ISAC is to maintain an intensive and regular dialogue regarding the aforementioned issues. ISAC provides advice in cooperation with stakeholders and existing organizations addressing invasive species. The ISAC meets up to twice per year.

Terms for 13 of the current members of the ISAC will expire in September 2011. After consultation with the other members of NISC, the Secretary of the Interior will actively solicit new nominees and appoint members to ISAC. Prospective members of ISAC should be knowledgeable in and represent one or more of the following communities of interests: Weed science, fisheries science, rangeland management, forest science, entomology, nematology, plant pathology, veterinary medicine, the broad range of farming or agricultural practices, biodiversity issues, applicable laws and regulations relevant to invasive species policy, risk assessment, biological control of invasive species, public health/epidemiology, industry activities, international affairs or trade, tribal or state government interests, environmental education, ecosystem monitoring, natural resource database design and integration, and internet-based management of conservation issues.

Prospective nominees should also have practical experience in one or more of the following areas: Representing sectors of the national economy that are significantly threatened by biological invasions (*e.g.,* agriculture, fisheries, public utilities, recreational users, tourism, etc.); representing sectors of the national economy whose routine operations may pose risks of new or expanded biological invasions (*e.g.,* shipping, forestry, horticulture, aquaculture, pet trade, etc.); developing natural resource management plans on regional or ecosystem-level scales; addressing invasive species issues, including prevention, control and monitoring, in multiple ecosystems and on multiple scales; integrating science and the human dimension in order to create effective solutions to complex conservation issues including education, outreach, and public relations experts; coordinating diverse groups of stakeholders to resolve complex environmental issues and conflicts; and complying with NEPA and other Federal requirements for public involvement in major conservation plans. Members will be selected in order to achieve a balanced representation of viewpoints, so to effectively address invasive species issues under consideration. No member may serve on the ISAC for more than two (2) consecutive terms. All terms will be limited to three (3) years in length.

Members of the ISAC and its subcommittees serve without pay. However, while away from their homes or regular places of business in the performance of services of the ISAC, members shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the government service, as authorized by section 5703 of Title 5, United States Code. Employees of the Federal Government ARE NOT eligible for nomination or appointment to ISAC.

The Obama administration prohibits individuals who are currently federally registered lobbyists to serve on all FACA and non-FACA boards, committees or councils.

Submitting Nominations

Nominations should be typed and must include each of the following:

1. A brief summary of no more than two (2) pages explaining the nominee's suitability to serve on the ISAC.

2. A resume or curriculum vitae.

3. At least two (2) letters of reference.

All required documents must be compiled and submitted in one complete nomination package. This office will NOT assemble nomination packages from documentation sent piecemeal. Incomplete submissions (missing one or more of the items described above) will not be considered. Nominations should be postmarked no later than June 3, 2011, to Lori Williams, Executive Director, National Invasive Species Council (OS/NISC), Regular Mail: 1849 C Street NW. (MS 1201 EYE), Washington, DC, 20240; Express Mail: 1201 Eye Street, NW., 5th Floor, Washington, DC 20005.

The Secretary of the Interior, on behalf of the other members of NISC, is actively soliciting nominations of qualified minorities, women, persons with disabilities and members of low income populations to ensure that recommendations of the ISAC take into account the needs of the diverse groups served.

Dated: March 30, 2011.

Christopher P. Dionghi,

Acting Executive Director, National Invasive Species Council.

[FR Doc. 2011–7916 Filed 4–1–11; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R6–ES–2011–N056; 60120–1113–0000–D2]

Endangered and Threatened Wildlife and Plants; Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permits.

SUMMARY: We announce our receipt of applications to conduct certain activities pertaining to enhancement of survival of endangered species. The Endangered Species Act requires that we invite public comment on these permit applications.

DATES: Written comments on this request for a permit must be received by May 4, 2011.

ADDRESSES: Submit written data or comments to the Assistant Regional Director—Ecological Services, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, CO 80225–0486; facsimile 303–236–0027.

SUPPLEMENTARY INFORMATION:

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal indentifying 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.

Document Availability

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act (5 U.S.C. 552a) and Freedom of Information Act (5 U.S.C. 552), by any party who submits a request for a copy of such documents within 30 days of the date of publication of this notice to Kris Olsen, by mail (*see* **ADDRESSES**) or by telephone at 303–236–4256. All comments we receive from individuals become part of the official public record.

Applications

The following applicants have requested issuance of enhancement of survival permits to conduct certain activities with endangered species pursuant to Section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Renewals

Applicants: Rockford Plettner, Nebraska Public Power District, Columbus, Nebraska, TE–039100; Kathleen Triby, U.S. Fish and Wildlife Service, Bowdoin National Wildlife Refuge, Malta, Montana, TE–127250; and Chadwin Smith, Headwaters Corp., Kearney, Nebraska, TE–183430. These applicants request renewed permits to take interior least terns (*Sterna antillarum athalassos*) and piping plovers (*Charadrius melodus*) in conjunction with recovery activities throughout the species' ranges for the purpose of enhancing their survival and recovery.

Applicants: Brian Holmes, Bureau of Land Management, Meeker, Colorado, TE–121911; Ben Janis, Lower Brule Sioux Tribe, Lower Brule, South Dakota, TE–131398; and Duane Shroufe, Arizona Game and Fish Department, Phoenix, Arizona, TE–163125. These applicants request renewed permits to take black-footed ferrets (*Mustela nigripes*) in conjunction with recovery activities throughout the species' range for the purpose of enhancing its survival and recovery.

Applicants: U.S. Geological Survey, South Dakota Coop Unit, Brookings, South Dakota, TE–104580; Patrick Braaten, U.S. Geological Survey, Ft. Peck, Montana, TE–047285; Rob Holm, U.S. Fish and Wildlife Service, Garrison Dam National Fish Hatchery, Riverdale, North Dakota, TE–062035; and Jeffery Powell, U.S. Fish and Wildlife Service, Gavins Point National Fish Hatchery, Yankton, South Dakota, TE–109048. These applicants request renewed permits to take pallid sturgeons (*Scaphirhynchus albus*) in conjunction with recovery activities throughout the species' range for the purpose of enhancing its survival and recovery.

Applicants: Melvin Coonrod, EIS Environmental and Engineering Consulting, Helper, Utah, TE–044836; Jim Friedley, Bureau of Indian Affairs, Ignacio, Colorado, TE–047381; William Butler, ERO Resources Corp., Denver, Colorado, TE–040510; and Peter Smith, Smith Environmental and Engineering, Westminster, Colorado, TE–044780. These applicants request renewed permits to take Southwestern willow flycatchers (*Empidonax traillii extimus*) in conjunction with recovery activities throughout the species' range for the purpose of enhancing its survival and recovery.

Applicant: National Park Service, Prairie Cluster Ecological Monitoring, Republic, Missouri, TE–047288. The applicant requests a renewed permit to take Topeka shiner (*Notropis topeka*) in conjunction with recovery activities throughout the species' range for the purpose of enhancing its survival and recovery.

Applicant: Claire Crow, National Park Service, Zion National Park, Springdale, Utah, TE–057485. The applicant requests a renewed permit to take Southwestern willow flycatcher (*Empidonax traillii extimus*), *Arctomecon humilis* (Dwarf bear-poppy), *Astragalus holmgreniorum* (Holmgren milk-vetch), and *Astragalus ampullarioides* (Shivwitz milk-vetch) in conjunction with recovery activities throughout the species' range for the purpose of enhancing their survival and recovery.

Applicant: Rabdy Chapo, Lincoln Children's Zoo, Lincoln, Nebraska, TE–210754. The applicant requests a renewed permit to take Salt Creek tiger beetle (*Cicindela nevadica lincolniana*) in conjunction with recovery activities throughout the species' range for the purpose of enhancing its survival and recovery.

Display Renewal

Applicant: Robert Brynda, Landry's Downtown Aquarium, Denver, Colorado, TE–046427. The applicant requests a renewed permit to possess bonytail chub (*Gila elegans*), humpback chub (*Gila cypha*), Colorado pikeminnow (*Ptychocheilus lucius*), razorback sucker (*Xyrauchen texanus*), desert pupfish (*Cyprinodon macularius*), and green sea turtle (*Chelonia mydas agassisi*) for public display and propagation in conjunction with recovery activities for the purpose of enhancing their survival and recovery.

Applicant: Tony Korth, Ak-sar-ben Aquarium, Gretna, Nebraska, TE–039090. The applicant requests a renewed permit to possess pallid sturgeon (*Scaphirhynchus albus*) for public display and propagation in conjunction with recovery activities for the purpose of enhancing the species' survival and recovery.

Applicant: Tracy Brower-Thessing, Cheyenne Mountain Zoo, Colorado Springs, Colorado, TE–040748. The applicant requests a renewed permit to possess black-footed ferret (*Mustela nigripes*) and Wyoming toad (*Bufo baxteri*) for public display and

propagation in conjunction with recovery activities for the purpose of enhancing their survival and recovery.

Applicant: Eddie Overbay, Texas Zoo, Victoria, Texas, TE–051840. The applicant requests a renewed permit to possess black-footed ferret (*Mustela nigripes*) for public display and propagation in conjunction with recovery activities for the purpose of enhancing the species' survival and recovery.

Applicant: Brent Anderson, Living Planet Aquarium, Sandy, Utah, TE–131638. The applicant requests a renewed permit to possess bonytail chub (*Gila elegans*), Colorado pikeminnow (*Ptychocheilus lucius*), June sucker (*Chasmistes liorus*), and razorback sucker (*Xyrauchen texanus*) for public display and propagation in conjunction with recovery activities for the purpose of enhancing their survival and recovery.

Applicant: Lee Jackson, National Mississippi River Museum, Dubuque, Iowa, TE–37337A. The applicant requests a permit to take Wyoming toad (*Bufo baxteri*) for public display and propagation in conjunction with recovery activities for the purpose of enhancing the species' survival and recovery.

Amendments

Applicant: Lee Simmons, Omaha's Henry Doorly Zoo, Omaha, NE, TE–053961. The applicant requests a permit amendment to add surveys for Salt Creek tiger beetle (*Cicindela nevadica lincolniana*) in conjunction with recovery activities throughout the species' range for the purpose of enhancing its survival and recovery.

New

Applicant: Stephen Spomer, Lincoln, NE, TE–37351A. The applicant requests a permit to take Salt Creek tiger beetle (*Cicindela nevadica lincolniana*) in conjunction with recovery activities throughout the species' range for the purpose of enhancing its survival and recovery.

Dated: March 28, 2011.

Hugh Morrison,

Acting Regional Director, Denver, Colorado.

[FR Doc. 2011–7879 Filed 4–1–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–ES–2011–N032; 40130–8081–0000–5B]

Merritt Island National Wildlife Refuge, Volusia and Brevard Counties, FL; Collection of Entrance Fees

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce our intent to modify the existing fee collection program at Merritt Island National Wildlife Refuge by adding entrance fees. The proposed entrance fees are $1.00 a day for one person, $5.00 a day for one vehicle, and $15.00 a year for one person. Under the Federal Lands Recreation Enhancement Act (REA), we will identify and post specific visitor fees and begin collecting them. The proposed fees only affect Black Point Wildlife Drive and three improved refuge boat ramps (Bairs Cove, Beacon 42, and Bio Lab). Fees are not required to enter any other portion of the refuge.

DATES: Submit your comments on this action by August 1, 2011. Unless we publish a notice in the **Federal Register** withdrawing this action, we will begin collecting entrance fees on September 1, 2011.

ADDRESSES: Submit your comments by one of the following methods:

- *U.S. mail or hand-delivery:* Merritt Island National Wildlife Refuge (Attention: Dorn Whitmore), P.O. Box 2683, Titusville, FL 32781;
- *Fax:* 321–861–1276, attn: "Merritt Island Fee"; or
- *E-mail: Dorn_Whitemore@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Dorn Whitmore, 321–861–2384.

SUPPLEMENTARY INFORMATION: In an effort to meet increasing demands for services, and to maintain developed facilities, we announce our intent to add a new class of fees to the existing fee program at Merritt Island National Wildlife Refuge (Refuge) under section 3(e) of the REA (16 U.S.C. 6801–6814). The Refuge will add the following type of entrance fees.

Merritt Island National Wildlife Refuge Visitors Entrance Fees

1. Free—Youth Ages 15 and Under.
2. $1.00—Daily Individual Entrance Fee (fee is per person/per day, when arriving on foot, bicycle, as part of a tour group, or on a bus).
3. $5.00—Daily Noncommercial Vehicle Entrance Fee (fee is per single, private noncommercial vehicle).
4. $5.00—Family Group Entrance Fee (fee is the maximum per day, per family, when arriving on foot, bicycle, as part of a tour group, or on a bus). A family group is defined as up to four adults (16 years and older) and any number of children (15 years and under).
5. $15.00—Annual Merritt Island National Wildlife Refuge Pass (per single private noncommercial vehicle) valid for 1 year.

Special Provisions and Exceptions to the Entrance Fee Structure

National Public Lands Day (NPLD) is a "fee-free" day for all visitors to the Refuge. The National Environmental Education Foundation determines the date of NPLD. The Refuge may establish other "fee-free" days in conjunction with special events such as Veterans Day and National Wildlife Refuge Week. The Refuge will not collect entrance fees from volunteers who are actively working on or for the Refuge during their scheduled duty times. Volunteers who contribute and record 80 hours of volunteer service or more during a fiscal year will receive an Annual Refuge Pass at no charge. The Refuge will waive entrance fees for school groups.

Passes in Lieu of Entrance Fees

The Refuge participates in two pass programs, the Federal Duck Stamp and the America the Beautiful National Parks and Federal Recreational Lands Pass programs. The Refuge honors and offers for purchase passes associated with these programs. Information on the programs is available at *http://www.fws.gov/duckstamps/* and *http://www.fws.gov/refuges/visitors/passes.html.*

The Refuge will also honor Golden Eagle, Golden Age, and Golden Access passes. A list of passes the Refuge will honor and/or sell follows. If your pass is not listed, we encourage you to contact the Refuge and inquire about pass acceptance prior to your visit.

1. *Federal Duck Stamp (valid for 1 year beginning July 1:* $15.00 annually.
2. America the Beautiful National Parks and Federal Recreational Lands.

Annual Pass: $80.00 annually.

Senior Pass (lifetime pass for those who qualify): One time fee of $10.00.

Access Pass (lifetime pass for those who qualify): Free.

3. *Golden Eagle, Golden Age, and Golden Access Pass:* The Refuge will honor these passes according to the provisions of each, but not available for purchase.
4. *Annual Merritt Island National Wildlife Refuge Pass:* $15.00 annually.
5. Annual Canaveral National Seashore Pass.

Daily Pass: $5.00 daily.
Annual Pass: $35.00 annually.

Entrance Fees Support Refuge Visitor Facilities

The Refuge plans to use additional collected fees to repair and maintain the following visitor facilities: Boat ramps at Bairs Cove, Beacon 42, and Bio Lab; Black Point Wildlife Drive; public access roads; parking lots; overlooks; and interpretive signs. Under the REA, in order to change fees, the site must have the staff and resources to manage a fee activity as well as to collect the deposit money. Under the National Wildlife Refuge System Improvement Act, we must allow only activities that are appropriate and compatible with the specific Refuge's purposes.

Authorities and Requirements of the REA

In December 2004, the REA became law. The REA provides authority through December 2014 for the Secretaries of the Departments of the Interior and Agriculture to establish, modify, charge, and collect recreation fees for use of some Federal recreation lands and waters, and contains specific provisions addressing public involvement in the establishment of recreation fees. The REA also directs the Secretaries of the Departments of the Interior and Agriculture to publish advance notice in the **Federal Register** whenever bureaus establish new recreation fee areas under their respective jurisdictions.

In accordance with our recreating fee program guidance, we are offering the public advance notice of our intent to collect entrance fees and an opportunity to comment on this fee collection before it goes into effect. The fees will be collected on the Refuge at Black Point Wildlife Drive and at the boat ramps at Bairs Cove, Beacon 42, and Bio Lab. If public comments were to provide substantive reasons why we should not collect entrance fees on the Refuge, we would reevaluate our plan and publish a subsequent notice in the **Federal Register** withdrawing this action. Otherwise, fee collection at Merritt Island National Wildlife Refuge—at Black Point Wildlife Drive, and at the Bairs Cove, Beacon 42, and Bio Lab boat ramps—will begin September 1, 2011, with fee types and amounts posted on site.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 16 U.S.C. 6803(b).

Dated: February 22, 2011.

Mark J. Musaus,

Deputy Regional Director, Southeast Region.

[FR Doc. 2011–7438 Filed 4–1–11; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCAN01000.L10200000.XZ0000]

Notice of Public Meeting: Northwest California Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 (FLPMA), and the Federal Advisory Committee Act of 1972 (FACA), the U. S. Department of the Interior, Bureau of Land Management (BLM) Northwest California Resource Advisory Council will meet as indicated below.

DATES: The meeting will be held Thursday and Friday, April 28 and 29, 2011, Lake and Mendocino counties, California. On April 28, the RAC convenes at 8:30 a.m. at the BLM Ukiah Field Office, 2550 North State Street, Ukiah, and departs immediately for a field tour to the Indian Valley Management Area in Lake County. Members of the public are welcome. They must provide their own transportation, beverages and food. On April 29, the council convenes at 8 a.m. in the conference room of the BLM Ukiah Field office. Time for public comment has been reserved for 11 a.m.

FOR FURTHER INFORMATION CONTACT: Nancy Haug, BLM Northern California District manager, (530) 224–2160; or BLM Public Affairs Officer Joseph J. Fontana, (530) 252–5332.

SUPPLEMENTARY INFORMATION: The 12-member council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in Northwest California. At this meeting agenda topics include discussion of alternative energy projects, management of the Sacramento River Bend area in Shasta County, off-highway vehicle management grants, and land tenure topics in the BLM Arcata, Redding and Ukiah field offices. All meetings are open to the public. Members of the public may present written comments to the council. Each formal council meeting will have time allocated for public comments. Depending on the number of persons wishing to speak, and the time available, the time for individual comments may be limited. Members of the public are welcome on field tours, but they must provide their own transportation and food. Individuals who plan to attend and need special assistance, such as sign language interpretation and other reasonable accommodations, should contact the BLM as provided above.

Dated: March 21, 2011.

Joseph J. Fontana,

Public Affairs Officer.

[FR Doc. 2011–7865 Filed 4–1–11; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNVS00560 L58530000 EU0000 241A; N–89137; 11–08807; MO# 4500019774; TAS: 14X5232]

Notice of Realty Action: Competitive Sealed Bid Sale of Public Lands in Clark County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: Pursuant to the Southern Nevada Public Land Management Act of 1998 (SNPLMA), as amended, the Bureau of Land Management (BLM) proposes to offer one parcel of public land totaling approximately 5 acres in the Las Vegas Valley by competitive sealed bid sale at not less than the appraised fair market value (FMV). The sale will be subject to the applicable provisions of Sections 203 and 209 of the Federal Land Policy and Management Act of 1976 (FLPMA). If not sold, the parcel described in this Notice may be identified for sale at a later date without further legal notice.

DATES: Interested parties may submit written comments regarding the proposed sale of public land and the Competitive Sealed Bid Sale, June 1, 2011 Environmental Assessment (EA) until May 19, 2011. The FMV for the parcel will be available on April 1, 2011, which is 60 days prior to the sale date.

Sealed bids may be mailed or delivered to the BLM Las Vegas Field

Office beginning May 2, 2011, and must be received no later than 4:30 p.m. Pacific Time, May 25, 2011, in accordance with the competitive sealed bid procedures. The bid opening for the proposed competitive sealed bid sale, if approved, will be conducted by the BLM on June 1, 2011 at 10 a.m. Pacific Time at the BLM Las Vegas Field Office at the address listed below.

ADDRESSES: Mail written comments to the BLM Las Vegas Field Office Manager, 4701 N. Torrey Pines Drive, Las Vegas, Nevada 89130, or by e-mail: *jill_pickren@blm.gov*.

FOR FURTHER INFORMATION CONTACT: Jill Pickren at *jill_pickren@blm.gov* or telephone: (702) 515–5194. For general information on previous BLM public land sales, go to: *http://www.blm.gov/nv/st/en/snplma/Land_Auctions.html*.

SUPPLEMENTARY INFORMATION: The parcel proposed for sale is located in the south central Las Vegas Valley at Executive Airport Drive and Via Inspirada in Henderson, Nevada. The proposed parcel of public land is described as:

Mount Diablo Meridian

T. 23 S., R. 61 E.,
Sec. 10, N½SW¼NE¼SE¼.

The area described contains 5 acres, more or less, in Clark County.

The map delineating the proposed sale parcel is available for public review at the BLM Las Vegas Field Office at the address listed above.

The proposed SNPLMA sale parcel was analyzed in the Las Vegas Valley Disposal Boundary Environmental Impact Statement (EIS), approved by Record of Decision on December 23, 2004. The sale parcel, N–89137, was analyzed in EA number DOI–BLM–NV–S010–2011–0194–EA, which tiers to the EIS. On publication of this notice, the EA is available at the BLM Las Vegas Field Office at the address listed above for public review and comment.

This proposed public sale is in conformance with the BLM Las Vegas Resource Management Plan (RMP), approved by Record of Decision on October 5, 1998. The BLM has determined that the proposed action conforms to the RMP decision LD–1 under the authority of FLPMA.

The land is being offered using competitive sealed bid sale procedures pursuant to 43 CFR 2711.3–1.

The parcel is subject to limitations prescribed by law and regulation, and prior to patent issuance, a holder of any right-of-way within the parcel may be given the opportunity to amend the right-of-way for conversion to a new term, including perpetuity, if applicable, or an easement.

Sealed bids must be presented for the sale parcel. Sealed bid envelopes must be marked on the lower front left corner with the BLM Serial Number for the parcel (N–89137) and the proposed sale date of June 1, 2011. Bids must be for not less than the Federally approved FMV.

Each sealed bid shall be accompanied by a cashier's check, certified check, or U.S. postal money order, and made payable in U.S. dollars to "Department of the Interior—Bureau of Land Management" for not less than 20 percent of the amount bid. Personal or company checks will not be accepted. The sealed bid envelope shall also include a completed and signed Certificate of Eligibility. Certificate of Eligibility forms are available at the BLM Las Vegas Field Office at the address listed above and the BLM Web site at: *http://www.blm.gov/nv/st/en/snplma/Land_Auctions.html*.

Following the end of the sale, all bid deposits will be returned to the unsuccessful bidders, if present, or will be returned by certified mail via postal service. If a bidder purchases the parcel and defaults on the parcel, the BLM may retain the bid deposit and cancel the sale. If the high bidder is unable to consummate the transaction for any other reasons, the second highest bid may be considered for award. The BLM will send the successful bidder(s) a high-bidder letter with detailed information for full payment.

Federal law requires that bidders must be (1) United States citizens 18 years of age or older; (2) a corporation subject to the laws of any State or of the United States; (3) an entity including, but not limited to associations or partnerships capable of acquiring and owning real property, or interests therein, under the laws of the State of Nevada; or (4) a State, State instrumentality, or political subdivision authorized to hold real property. United States citizenship is evidenced by presenting a birth certificate, passport, or naturalization papers. Failure to submit the above requested documents to BLM within 30 days from receipt of the high-bidder letter shall result in cancellation of the sale and forfeiture of the bid deposit.

Within 30 days of the sale, the BLM will, in writing, either accept or reject all bids received. No contractual, or other rights against the United States, may accrue until the BLM officially accepts the offer to purchase and the full bid price is paid.

Terms and Conditions: Certain minerals for the parcel will be reserved in accordance with the BLM's approved Mineral Potential Report, dated January 22, 1999. Information pertaining to the reservation of minerals specific to the parcel is located in the case file and is available for public review at the BLM Las Vegas Field Office at the address listed above.

The patent, when issued for sale parcel N–89137, will contain a mineral reservation to the United States for oil and gas and all saleable mineral deposits. An offer to purchase the parcel will constitute an application for mineral conveyance of the "no known value" mineral interests. In conjunction with the final payment, the applicant will be required to pay a $50 non-refundable filing fee for processing the conveyance of the "no known value" mineral interests, which will be sold simultaneously with the surface interests.

The following numbered terms and conditions will appear on the conveyance document for this parcel:

1. Oil, gas, and all saleable mineral deposits on the lands in Clark County, if any, are reserved to the United States, in accordance with the Mineral Potential Report. Permittees, licensees, and lessees of the United States retain the right to prospect for, mine, and remove such leasable and saleable minerals owned by the United States under applicable law and any regulations that the Secretary of the Interior may prescribe, together with all necessary access and exit rights;

2. A right-of-way is reserved for ditches and canals constructed by authority of the United States under the Act of August 30, 1890 (43 U.S.C. 945);

3. The parcel is subject to valid existing rights;

4. The parcel is subject to reservations for road, public utilities and flood control purposes, both existing and proposed, in accordance with the local governing entities' transportation plans;

5. By accepting this patent, the patentee agrees to indemnify, defend and hold the United States harmless from any costs, damages, claims, causes of action, penalties, fines, liabilities, and judgments of any kind or nature arising from the past, present, and future acts or omissions of the patentee, its employees, agents, contractors, or lessees, or any third-party, arising out of, or in connection with, the patentee's use, occupancy, or operations on the patented real property. This indemnification and hold harmless agreement includes, but is not limited to, acts and omissions of the patentee, its employees, agents, contractors, or lessees, or third party arising out of or in connection with the use and/or occupancy of the patented real property resulting in: (a) Violations of Federal,

State, and local laws and regulations applicable to the real property; (b) Judgments, claims or demands of any kind assessed against the United States; (c) Costs, expenses, damages of any kind incurred by the United States; (d) Other releases or threatened releases on, into or under land, property and other interests of the United States by solid or hazardous waste(s) and/or hazardous substances(s), as defined by Federal or State environmental laws; (e) Other activities by which solid or hazardous substances or wastes, as defined by Federal and State environmental laws were generated, released, stored, used or otherwise disposed of on the patented real property, and any cleanup response, remedial action, or other actions related in any manner to said solid or hazardous substances or wastes; or (f) Natural resource damages as defined by Federal and State law. This covenant shall be construed as running with the patented real property, and may be enforced by the United States in a court of competent jurisdiction; and,

6. Pursuant to the requirements established by Section 120(h) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9620(h) (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1988, 100 Stat. 1670, notice is hereby given that the described land has been examined and no evidence was found to indicate that any hazardous substances have been stored for 1 year or more, nor had any hazardous substances been disposed of or released on the subject property.

No warranty of any kind, express or implied, is given by the United States as to the title, whether or to what extent the land may be developed, its physical condition, future uses, or any other circumstance or condition. The conveyance of any parcel will not be on a contingency basis. However, to the extent required by law, the parcel is subject to the requirements of Section 120(h) of the CERCLA.

The parcel may be subject to land use applications received prior to publication of this Notice if processing the application would have no adverse effect on the marketability of title, or the FMV of the parcel. Encumbrances of record that may appear in the BLM public files for the parcel proposed for sale are available for review during business hours, 7:30 a.m. to 4:30 p.m., Pacific Time, Monday through Friday, at the Las Vegas Field Office, except during Federal holidays.

The BLM will notify valid existing right-of-way holders of their ability to convert their compliant rights-of-way to perpetual rights-of-way or easements. In accordance with Federal regulations at 43 CFR 2807.15, once notified, each valid holder may apply for the conversion of their current authorization.

Unless other satisfactory arrangements are approved in advance by a BLM authorized officer, conveyance of title shall be through the use of escrow. Designation of the escrow agent shall be through mutual agreement between the BLM and the prospective patentee, and costs of escrow shall be borne by the prospective patentee.

Requests for all escrow instructions must be received by the BLM Las Vegas Field Office prior to 30 days before the prospective patentee's scheduled closing date. There are no exceptions.

No contractual or other rights against the United States may accrue until the BLM officially accepts the offer to purchase, and the full bid price is submitted by the 180th day following the sale.

All name changes and supporting documentation must be received at the BLM Las Vegas Field Office 30 days from the date on the high-bidder letter by 4:30 p.m., Pacific Time. Name changes will not be accepted after that date. To submit a name change, the apparent high bidder must submit the name change in writing on the Certificate of Eligibility form to the BLM Las Vegas Field Office.

The remainder of the full bid price for the parcel must be paid prior to the expiration of the 180th day following the close of the sale. Payment must be submitted in the form of a certified check, postal money order, bank draft or cashier's check made payable in U.S. dollars to the "Department of the Interior—Bureau of Land Management." Personal or company checks will not be accepted.

Arrangements for electronic fund transfer to BLM for payment of the balance due must be made a minimum of 2 weeks prior to the payment date. Failure to pay the full bid price prior to the expiration of the 180th day will disqualify the apparent high bidder and cause the entire 20 percent bid deposit to be forfeited to the BLM. Forfeiture of the 20 percent bid deposit is in accordance with 43 CFR 2711.3–1(d). No exceptions will be made. The BLM cannot accept the remainder of the bid price after the 180th day of the sale date.

The BLM will not sign any documents related to 1031 Exchange transactions. The timing for completion of an exchange is the bidder's responsibility in accordance with Internal Revenue Service regulations. The BLM is not a party to any 1031 Exchange.

All sales are made in accordance with and subject to the governing provisions of law and applicable regulations.

In accordance with 43 CFR 2711.3–1(f), the BLM may accept or reject any or all offers to purchase, or withdraw any parcel of land or interest therein from sale, if, in the opinion of a BLM authorized officer, consummation of the sale would be inconsistent with any law, or for other reasons.

The parcel, if not sold by competitive sealed bid sale, may be identified for sale at a later date without further legal notice.

On publication of this notice and until completion of the sale, the BLM is no longer accepting land use applications affecting the parcel identified for sale. However, land use applications may be considered after the sale if the parcel is not sold.

In order to determine the FMV, certain assumptions may have been made concerning the attributes and limitations of the lands and potential effects of local regulations and policies on potential future land uses. Through publication of this notice, the BLM advises that these assumptions may not be endorsed or approved by units of local government. It is the buyer's responsibility to be aware of all applicable Federal, State, and local government laws, regulations and policies that may affect the subject lands, including any required dedication of lands for public uses. It is also the buyer's responsibility to be aware of existing or prospective uses of nearby properties. When conveyed out of Federal ownership, the lands will be subject to any applicable laws, regulations, and policies of the applicable local government for proposed future uses. It will be the responsibility of the purchaser to be aware through due diligence of those laws, regulations, and policies, and to seek any required local approvals for future uses. Buyers should also make themselves aware of any Federal or State law or regulation that may impact the future use of the property. Any land lacking access from a public road or highway will be conveyed as such, and future access acquisition will be the responsibility of the buyer.

Information concerning the sale, appraisals, reservations, procedures and conditions, CERCLA and other environmental documents are available for review at the BLM Las Vegas Field Office at the address listed above.

Only written comments will be considered properly filed.

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.

Any adverse comments regarding the proposed sale will be reviewed by the BLM Nevada State Director, who may sustain, vacate, or modify this realty action. In the absence of any valid adverse comments, this realty action will become the final determination of the Department of the Interior.

Beth Ransel,

Acting Assistant Field Manager, Division of Lands.

Authority: 43 CFR 2711.

[FR Doc. 2011–7871 Filed 4–1–11; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Correction; Central Valley Project Improvement Act, Standard Criteria for Agricultural and Urban Water Management Plans

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of correction.

SUMMARY: On March 25, 2011, the Bureau of Reclamation published a notice in the Federal Register at 76 FR 16818 on the Central Valley Project Improvement Act Standard Criteria for Agricultural and Urban Water Management Plans. In the **SUPPLEMENTARY INFORMATION** section, the Web site in which to view copies of the finalized Criteria was incorrect. It should read: *http://www.usbr.gov/mp.watershare/news/2011_standard_criteria.pdf.*

FOR FURTHER INFORMATION CONTACT: Ms. Melissa Crandell, Bureau of Reclamation, 2800 Cottage Way, MP–410, Sacramento, California 95825, 916–978–5208, or e-mail at *mcrandell@usbr.gov.*

Richard J. Woodley,

Regional Resources Manager, Mid-Pacific Region.

[FR Doc. 2011–7870 Filed 4–1–11; 8:45 am]

BILLING CODE 4310–MN–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OMB Number 1121–New]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of new information collection: Survey of State Court Criminal Appeals, 2010.

The Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. The proposed information collection was previously published in the **Federal Register** Volume 76, Number 20, pages 5401–5402, on January 31, 2011, allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comment until May 4, 2011. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer. The best way to ensure your comments are received is to e-mail them to *oira_submission@omb.eop.goiv* or fax them to (202) 395–7285. All comments should reference the 8 digit OMB number for the collection or the title of the collection. If you have questions concerning the collection, please call Thomas H. Cohen at (202) 514–8344 or the DOJ Desk Officer at (202) 395–3176.

Written comments and suggestions from the pubic and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the function 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.

Overview of This Information

(1) *Type of information collection:* New data collection, Survey of State Court Criminal Appeals (SSCCA), 2010.

(2) *The title of the form/collection:* Survey of State Court Criminal Appeals or SSCCA, 2010

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form labels are SSCCA—IAC and SSCCA—COLR, Bureau of Justice Statistics, Office of Justice Programs, United States Department of Justice.

(4) *Affected Public Who Will be Asked or Required to Respond, as well as a Brief Abstract:* State intermediate appellate courts and state courts of last resort. *Abstract:* The 2010 SSCCA will focus on criminal cases disposed in a national sample of state intermediate appellate courts and courts of last resort and will aim to obtain information on certain key case characteristics of these appeals. Some of the information collected will include the types of criminal cases appealed to state intermediate appellate courts and courts of last resort, the legal issues raised on appeal, the impact of the appellate process on trial court outcomes, the extent that appellate claims are decided on the merits, and case processing time for criminal appeals. The 2010 SSCCA will also attempt to examine all death penalty cases decided on appeal in 2010 as well as cases that were adjudicated in both intermediate appellate courts and courts of last resort. All data collected will be accurate as of December 2010.

(5) *An Estimate of the Total Number of Respondents and the Amount of Time Estimated for an Average Respondent to Respond:* The Survey of State Court Criminal Appeals (SSCCA) will collect data on a national sample of approximately 5,000 criminal appeals concluded in all of the nation's 143 intermediate appellate courts and courts of last resort in 2010. The burden hour computation involves both sample list generation and case level data collection. Each of the nation's 143 intermediate appellate courts and courts of last resort will be asked to generate a sample of all their direct criminal

appeals disposed in 2010 from which a national sample can be drawn for the SSCCA. It is estimated that it should take 3 hours for each of the nation's 143 appellate courts to generate an appropriate sample list. The burden hour component regarding case level data collection involves copying the necessary appellate court documentation from three major sources for submission to the data collection agent including (1) the submitted legal briefs, (2) the opinions produced by the courts, and (3) the docketing information. Assuming 35 appeals per court (5,000 appeals/143 courts = 35 appeals) and 10 minutes to copy each legal brief or opinion, the burden hours to copy these paper documents for each court should be about 6 hours for the legal briefs and 6 hours for the opinions (35 appeals * .17 hours per opinion/brief = 6 hours). In addition to providing copies of legal briefs and opinions, it is estimated that each appellate court will require 3 hours to provide the necessary docketing information.

(6) *An Estimate of the Total Public Burden (in hours) Associated with the collection:* The estimated public burden associated with this collection is 1,224 hours. The burden hour computation is calculated by identifying those appellate courts that have limited online accessibility necessitating the submission of legal briefs, docketing materials, or court opinions for coding by the data collection agent. No burden hours are associated with collecting data from appellate courts with complete internet accessibility because all data can be obtained online. It is estimated that a total of 795 hours will be needed for the appellate courts with limited internet accessibility to provide the documentation in the form of mailed legal briefs/opinions or docket extracts to complete the SSCCA data collection. The 795 number is calculated by first computing the total burden hours appellate courts need to provide copies of submitted legal briefs (90 courts * 6 hours per court to provide copies of submitted legal briefs = 540 hours); and secondly, by computing the total burden hours for providing data extracts of docketing information (57 courts * 3 hours per court to provide extracts of docketing information = 171 hours); and thirdly, by computing the total burden hours for providing copies of court opinions (14 courts * 6 hours per court to provide copies of court opinions = 84 hours). Hence, 540 hours for providing copies of submitted briefs + 171 hours for providing data extracts of docketing information + 84 hours for providing copies of court opinions = 795 hours. When the burden hours for sample list generation are added, the total burden hours for the SSCCA project sums to 1,224 hours (795 hours to provide necessary case documentation + 429 hours for sample list generation = 1,224 hours).

If additional information is required contact: Lynn Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street, NE., Suite 2E–808, Washington, DC 20530.

Dated: March 30, 2011.

Lynn Murray,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. 2011–7915 Filed 4–1–11; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OMB Number 1121–0260]

Agency Information Collection Activities: Proposed Collection: Comments Requested

ACTON: 30-day notice of information collection under review; Police Public Contact Survey.

The Department of Justice (DOJ), Office of Justice Programs (OJP), Bureau of Justice Statistics (BJS), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. Office of Management and Budget approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** Volume, 76, Number 19, pages 5207, 5208, on January 28, 2011, allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comment until May 4, 2011. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Christine Eith, Bureau of Justice Statistics, 810 Seventh Street, NW., Washington, DC 20531 (phone: 202–305–4559).

Written comments concerning this information collection should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: DOJ Desk Officer. The best way to ensure your comments are received is to e-mail them to *oira_submission@omb.eop.gov* or fax them to 202–395–7285. All comments should reference the 8 digit OMB number for the collection or the title of the collection. If you have questions concerning the collection, please call Christine Eith at 202–305–4559 or the DOJ Desk Officer at 202–395–3176.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the function 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.

Overview of This Information

(1) *Type of information collection:* Reinstatement, with change, of a previously approved collection for which approval has expired.

(2) *The title of the form/collection:* Police Public Contact Survey.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* PPCS–1. Bureau of Justice Statistics, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Eligible individuals must be age 16 or older. Other: None. The Police Public Contact Supplement fulfills the mandate set forth by the Violent Crime Control and Law Enforcement Act of 1994 to collect, evaluate, and publish data on the use of excessive force by law enforcement personnel. The survey will be conducted as a supplement to the National Crime Victimization Survey in

all sample households for a six (6) month period.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* Approximately 15,117 respondents will be eligible for the PPCS each month from July to December 2011. Of the eligible 90,700 persons, we expect approximately 80 percent or 72,600 of the eligible persons will complete a PPCS interview. Of those persons interviewed for the PPCS, we estimate approximately 81.5 percent or 59,100 will complete only the first two (contact screener questions) survey questions. The estimated time to complete the control information on the PPCS form, read the introductory statement, and administer the first two contact screener questions to the respondents is approximately 2 minute per person. Furthermore, we estimate that the remaining 18.5 percent of the interviewed persons or 13,400 persons will report a face-to-face contact with the police during the 12 month reference period prior to the date of interview. The time to ask the detailed questions regarding the nature of the contact is estimated to take an average of 10 minutes. Respondents will be asked to respond to this survey only once during the six month period.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The Total estimated annual burden hours are 4,193 hours.

If additional information is required contact: Lynn Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N. Street, NE., Suite 2E–808, Washington, DC 20530.

Dated: March 30, 2011.

Lynn Murray,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2011–7917 Filed 4–1–11; 8:45 am]

BILLING CODE 4410–18–P

MORRIS K. UDALL AND STEWART L. UDALL FOUNDATION

Sunshine Act Meetings

TIME AND DATE: 9 a.m. to 12 p.m., Friday, April 15, 2011.

PLACE: University of Arizona Special Collections, 1510 E. University Boulevard, Tucson, Arizona, Meeting Room C205.

STATUS: This meeting will be open to the public, unless it is necessary for the Board to consider items in executive session.

MATTERS TO BE CONSIDERED: (1) A report on the U.S. Institute for Environmental Conflict Resolution; (2) A report from the Udall Center for Studies in Public Policy; (3) A report on the Native Nations Institute; (4) Program Reports; and (5) A Report from the Management Committee.

PORTIONS OPEN TO THE PUBLIC: All sessions with the exception of the session listed below.

PORTIONS CLOSED TO THE PUBLIC: Executive session.

CONTACT PERSON FOR MORE INFORMATION: Ellen K. Wheeler, Executive Director, 130 South Scott Avenue, Tucson, AZ 85701, (520) 901–8500.

Dated: March 23, 2011.

Ellen K. Wheeler,

Executive Director, Morris K. Udall and Stewart L. Udall Foundation, and Federal Register Liaison Officer.

[FR Doc. 2011–7303 Filed 4–1–11; 8:45 am]

BILLING CODE 6820–FN–M

EXECUTIVE OFFICE OF THE PRESIDENT

Office of National Drug Control Policy

Draft Tribal Consultation Policy

AGENCY: Executive Office of the President, Office of National Drug Control Policy.

ACTION: Notice of 60-day public comment period.

SUMMARY: Pursuant to Executive Order 13175, the Director, National Drug Control Policy, is establishing a policy governing how the Office of National Drug Control Policy, Executive Office of the President [ONDCP] will consult with American Indian and Alaska Native Tribes, tribal organizations and urban Indian organizations regarding Federal policies that directly affect Indian Country and urban Indian communities.

Table of Contents

1. Dates

Comments must be received by ONDCP on or before 5 p.m. Friday June 3, 2011.

2. Addresses

Written comments may be submitted through electronic mail at *TribalConsultation@ondcp.eop.gov* or via facsimile at (202) 395–5543 to Executive Office of the President, Office of National Drug Control Policy, Office of Intergovernmental & Public Liaison, c/o Office of Legal Counsel, Washington DC 20503.

3. For Further Information Contact

Mr. Tony Martinez, Associate Director, Office of Intergovernmental & Public Liaison, Office of National Drug Control Policy, Executive Office of the President, 750 17th Street, NW., Washington, DC 20503; MMartinez@ondcp.eop.gov; (202) 395–5758 (This is not a toll-free number); toll-free 1–888–395–6327.

4. Supplementary Information

The Office of National Drug Control Policy (ONDCP), Executive Office of the President, is responsible for setting and monitoring Federal government policies to reduce the demand for illegal drugs; prevent the initiation of substance use by young people; combat drug production and trafficking; and, reduce drug-related crime, violence, and disease. In addition to its leadership role in developing and coordinating drug control policies, ONDCP is also a central organizing body, managing the anti-drug efforts and certifying the drug control budgets of other Federal government agencies.

As directed by President Obama in his Memorandum of November 5, 2009, this draft policy governs how the Office of National Drug Control Policy will comply with the letter and spirit of Executive Order 13175 of November 6, 2000, *Consultation and Coordination with Indian Tribal Governments.*

5. Draft Tribal Consultation Policy

Background

The Office of National Drug Control Policy (ONDCP), Executive Office of the President, is responsible for setting and monitoring Federal government policies to reduce the demand for illegal drugs; prevent the initiation of substance use

by young people; combat drug production and trafficking; and, reduce drug-related crime, violence, and disease. In addition to its leadership role in developing and coordinating drug control policies, ONDCP is also a central organizing body, managing the anti-drug efforts and certifying the drug control budgets of other Federal government agencies.

As directed by President Obama in his Memorandum of November 5, 2009, this draft policy governs how the Office of National Drug Control Policy will comply with the letter and spirit of Executive Order 13175 of November 6, 2000, *Consultation and Coordination with Indian Tribal Governments*. By implementing this policy, ONDCP will engage in meaningful and mutually beneficial consultation with American Indian and Alaska Native Tribes, tribal organizations, and urban Indian organizations. ONDCP's tribal consultation activities will support Indian self-determination and self-governance by giving tribes strong voices in shaping the Federal policies that directly affect their ability to govern themselves and to provide for the health, safety, and welfare of their citizens.

Guiding Principles

ONDCP acknowledges and accepts the following definition of consultation:

Consultation is an enhanced form of communication which emphasizes trust, respect, and shared responsibility. It is an open and free exchange of information and opinion among parties which leads to mutual understanding and comprehension. Consultation is integral to a deliberative process, which results in an effective collaboration and informed decision making.

ONDCP's Tribal Consultation Policy will provide for regular, meaningful, and mutually-beneficial consultation and collaboration to enhance ONDCP's relationships with American Indian and Alaska Native Tribes, tribal organizations and urban Indian organizations. The Policy will address the concerns and responsibilities of Federal and American Indian and Alaska Native Tribes, tribal organizations, and urban Indian organizations. Through creation and implementation of this policy ONDCP:

- Commits to seeking to understand the cultural values of American Indian and Alaska Native Tribes, tribal organizations, and urban Indian organizations to facilitate the development of Federal drug control policies which will be effective in Indian country and beneficial to Native peoples;
- Recognizes the special legal status of tribal governments;
- Respects tribal sovereignty and supports tribal self-determination and self-governance;
- Honors the United States trust obligations;
- Commits to improving communications while maximizing input from American Indian and Alaska Native Tribes, tribal organizations, and urban Indian organizations;
- Will consult on a government-to-government basis with appropriate representatives of American Indian and Alaska Native Tribes, tribal organizations, and urban Indian organizations;
- Identifies ONDCP officials who are knowledgeable about policies relevant to tribal populations and are authorized to speak for ONDCP; and
- Ensures ONDCP's component heads and program staff engage in consultation in a manner consistent with this ONDCP-wide policy.

ONDCP Tribal Consultation Process

1. Consultation will be initiated when either ONDCP's Director, Tribal Liaison or an American Indian or Alaska Native Tribe, tribal organization or urban Indian organization requests in writing consultation to discuss policy development issues or implementation or changes that will have a direct effect upon Indian country or Native peoples.

2. Requests for consultation will identify:

a. The subject matter requiring consultation

b. The relevant policies, programs, statutes, or proposed legislation

c. The American Indian and Alaska Native Tribes, tribal organizations and/or urban Indian organizations which will be directly affected

3. Methods of Consultation.

ONDCP Tribal Consultation may occur through a combination of one or more of the following methods of consultation:

a. *Correspondence:* Written communications exchanged between ONDCP and directly affected American Indian and Alaska Native Tribes, tribal organizations, and/or urban Indian organizations. Correspondence should provide an explanation of the issue(s) and afford an opportunity for tribal comment.

b. *Meetings:* Meetings with directly affected American Indian and Alaska Native Tribes, tribal organizations, and/or urban Indian organizations to discuss all relevant issues can take the form of a single purpose meeting or a national or regional forum, if appropriate. Meetings can be face-to-face or using electronic technology, when available and appropriate.

c. **Federal Register**: ONDCP publication in the **Federal Register** may be used to solicit comments from tribes, with explicit instructions for submitting comments and adequate time for responses from directly affected American Indian and Alaska Native Tribes, tribal organizations, and/or urban Indian organizations.

4. *Reporting of Consultation Outcome:* ONDCP program offices will provide a report on their consultation sessions, summarizing the discussion, recommendations, responses, and soliciting feedback from directly affected American Indian and Alaska Native Tribes, tribal organizations, and/or urban Indian organizations regarding the consultation following the conclusion of the tribal consultation process. The ONDCP report will be available on the ONDCP Web site at *http://www.whitehousedrugpolicy.gov/tribal/consultation*. Once ONDCP's Tribal Consultation Process is complete and a proposed drug control policy is approved and issued by ONDCP, ONDCP will distribute the final policy to directly affected American Indian and Alaska Native Tribes, tribal organizations, and/or urban Indian organizations. The final drug control policy will also be posted on the ONDCP Web site at *http://www.whitehousedrugpolicy.gov/tribal* and linked to the Web sites of appropriate national tribal and native organizations.

ONDCP Annual National Tribal Consultation Meetings

Subject to appropriations, ONDCP will endeavor to attend three annual meetings of national tribal organizations, including the annual National Congress of American Indians Conference.

ONDCP Tribal Consultation Team

ONDCP will create a tribal consultation team; which will include representatives of ONDCP's Office of the Director; Office of Intergovernmental & Public Liaison; Office of Legal Counsel; Office of State, Local and Tribal Affairs; Office of Demand Reduction; Office of Supply Reduction; Office of Planning and Budget; Office of Research and Data Analysis; Office of Legislative Affairs; and Office of Public Affairs. ONDCP's Associate Director for Intergovernmental and Public Liaison or his/her designee will lead ONDCP's Tribal Consultation Process and ONDCP's Tribal Consultation Team to review and identify opportunities to strengthen and improve ONDCP outreach to tribal

governments as well as tribal communication and consultation.

ONDCP Tribal Communication Plan

In furtherance of the President's goals for tribal consultation and policy of Federal transparency, ONDCP will develop a communications plan, including new media, for regularly communicating with and requesting input from American Indian and Alaska Native Tribes, tribal organizations, and urban Indian organizations about Federal drug control policies which directly affect them prior to ONDCP action.

ONDCP Continuous Review and Evaluation

ONDCP will regularly review its policies, actions, procedures, and practices to identify Federal drug control policies which directly affect American Indian and Alaska Native Tribes, tribal organizations, and urban Indian organizations. These reviews will identify opportunities to strengthen and improve ONDCP's tribal consultation policy. ONDCP will also monitor its practices to ensure effective and consistent implementation of its tribal consultation policy.

ONDCP Intergovernmental Collaboration

ONDCP will participate in timely recurring meetings with other Federal drug control agencies subject to Executive Order 13175, regarding policies which directly affect American Indian and Alaska Native Tribes, tribal organizations, and urban Indian organizations in order to streamline the consultation process and create consistent and effective mutually beneficial communications with American Indian and Alaska Native Tribes, tribal organizations and urban Indian organizations. These interagency meetings will identify Federal drug control issues arising within the agencies which directly affect American Indian and Alaska Native Tribes, tribal organizations and urban Indian organizations and which need to be communicated to the tribes or rise to the level of consultation.

ONDCP Point of Contact

ONDCP designates its Associate Director for Intergovernmental & Public Liaison as the responsible official for submitting progress reports and ensuring ONDCP's compliance with this tribal consultation policy and related action plans.

Tribal Review of Draft Consultation Policy

ONDCP will circulate the draft tribal consultation policy to American Indian and Alaska Native Tribes, tribal organizations, and urban Indian organizations for review and comment. ONDCP's tribal consultation team will consider the comments received and revise the draft tribal consultation policy, if necessary, in response to comments.

No Creation of Right or Benefit

This policy is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable by law or in equity by any party against ONDCP or the United States, its departments, agencies, or entities, its officers, employees, or agents or any other person. ONDCP shall carry out the provisions of this policy to the extent permitted by law and consistent with its statutory authorities and enforcement mechanisms.

Federal Register *Notice*

ONDCP will publish this draft tribal consultation policy in the **Federal Register** and provide a 60-day comment period.

Review of Comments

ONDCP's tribal consultation team will review and consider the comments received regarding the draft tribal consultation policy and revise the draft policy, if necessary, in response to comments received.

Final Tribal Consultation Policy Publication

ONDCP will issue its final tribal consultation policy within 90 days of the close of the comment period.

Dated: March 29, 2011.

Linda V. Priebe,

Deputy General Counsel, Office of National Drug Control Policy.

[FR Doc. 2011–7833 Filed 4–1–11; 8:45 am]

BILLING CODE 3180–02–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on Advanced Boiling Water Reactor (ABWR); Notice of Meeting

The ACRS Subcommittee on Advanced Boiling Water Reactor (ABWR) will hold a meeting on April 21, 2011, Room T–2B1, 11545 Rockville Pike, Rockville, MD.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed to protect information that is proprietary pursuant to 5 U.S.C. 552b(c)(4).

The agenda for the subject meeting shall be as follows:

Thursday, April 21, 2011—8:30 a.m. until 4 p.m.

The purpose of the meeting is to review Chapters 1, 17 and 19 of the Safety Evaluation Report (SER) with no open items associated with the South Texas Project Combined License Application and the issue of Part 21 reports. The Subcommittee will hear presentations by and hold discussions with the Nuclear Innovation North America (NINA), LLC, the NRC staff, and other interested persons. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Maitri Banerjee (Telephone 301–415–6973 or E-mail: *Maitri.Banerjee@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty five hard copies of each presentation or handout should be provided to the Designated Federal Official thirty minutes before the meeting. In addition, one electronic copy of each presentation should be e-mailed to the Designated Federal Official one day before meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the Designated Federal Official with a CD containing each presentation at least 30 minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 21, 2010, (75 FR 65038–65039).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs*. Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary

to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

Dated: March 29, 2011.

Cayetano Santos,

Branch Chief, Reactor Safety Branch A, Advisory Committee on Reactor Safeguards.

[FR Doc. 2011–7887 Filed 4–1–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of The ACRS Subcommittee on United States-Advanced Pressurized Water Reactor (US–APWR); Notice of Meeting

The ACRS Subcommittee on United States-Advanced Pressurized Water Reactor (US–APWR) will hold a meeting on April 22, 2011, Room T–2B1, 11545 Rockville Pike, Rockville, MD.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed to protect information that is designated as proprietary by Mitsubishi Heavy Industries, Ltd. (MHI) and its contractors pursuant to 5 U.S.C. 552b(c)(4).

The agenda for the subject meeting shall be as follows:

Friday, April 22, 2011—8:30 a.m. until 5 p.m.

The Subcommittee will review Chapters 11, "Radioactive Waste Management" and 12, "Radiation Protection" of the Safety Evaluation Report (SER) associated with the US–APWR design certification as well as technical reports related to the Gas Turbine Generator design. The Subcommittee will hear presentations by and hold discussions with MHI, the NRC staff, and other interested persons. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Mrs. Ilka Berrios (Telephone 301–415–3179 or *E-mail: Ilka.Berrios@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 21, 2010, (75 FR 65038–65039).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the website cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

Dated: March 29, 2011.

Yoira Diaz-Sanabria,

Acting Chief, Reactor Safety Branch B, Advisory Committee on Reactor Safeguards.

[FR Doc. 2011–7891 Filed 4–1–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Revised Meeting Notice

The Agenda for the 582nd ACRS meeting, scheduled to be held on April 7–9, 2011, has been revised as noted below. Notice of this meeting was previously published in the **Federal Register** on Wednesday, March 23, 2011 (74 FR 16457–16458).

The discussion on the Commission Paper on Emergency Planning for Small Modular Reactors, scheduled to be held on Thursday, April 7, 2011, between 10:45 a.m. and 12:45 p.m., is being postponed to a future meeting.

On April 7, 2011, from 10:45 a.m. to 12:45 p.m. The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the events at the Fukushima Reactor Site in Japan [**Note:** A portion of this session may be closed to protect information provided in confidence by a foreign source pursuant to 5 U.S.C. 552b (c)(4).]

Further information regarding this meeting can be obtained by contacting Mrs. Ilka Berrios, Cognizant ACRS Staff (Telephone: 301–415–3179, E-mail: *Ilka.Berrios@nrc.gov*), between the hours of 7:30 a.m. and 4:30 p.m.

Dated: March 29 2011.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 2011–7893 Filed 4–1–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on Reliability and Probabilistic Risk Assessment (PRA); Notice of Meeting

The ACRS Subcommittee on Reliability and Probabilistic Risk Assessment (PRA) will hold a meeting on April 20, 2011, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open.

The agenda for the subject meeting shall be as follows:

Wednesday, April 20, 2011–8:30 a.m. Until 5 p.m.

The Subcommittee will review the development of human reliability analysis (HRA) models as well as fire HRA guidelines in NUREG–1921, Fire Human Reliability Analysis Guidelines. The Subcommittee will hear presentations by and hold discussions with the NRC staff and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), John Lai (Telephone 301–415–5197 or E-mail: *John.Lai@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted

only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 21, 2010, (75 FR 65038–65039).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

Dated: March 29, 2011.

Yoira Diaz-Sanabria,

Reactor Safety Branch B, Advisory Committee on Reactor Safeguards.

[FR Doc. 2011–7889 Filed 4–1–11; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of Corestream Energy, Inc. (f/k/a Zealous, Inc.); Order of Suspension of Trading

March 31, 2011.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Corestream Energy, Inc. ("Corestream") (f/k/a Zealous, Inc.) because it has failed to file certain periodic reports with the Commission and because of questions regarding the accuracy and adequacy of statements made by Corestream in press releases concerning, among other things, the acquisition of certain oil wells. Corestream is quoted on OTC Link (previously the Pink Sheets) operated by OTC Markets Group, Inc. under the ticker symbol "ZLUS."

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed company is suspended for the period from 9:30 a.m. EDT on March 31, 2011, through 11:59 p.m. EDT on April 13, 2011.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–8038 Filed 3–31–11; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64141; File No. SR–Phlx–2011–32]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX LLC Relating to Inactive Nominees and Dividend and Merger Strategy Definitions

March 29, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 24, 2011, NASDAQ OMX PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's Fee Schedule to apply the Trading Floor Personnel Registration Fee to Inactive Nominees.[3] In addition, the Exchange is proposing to amend the dividend and merger strategy text in the Exchange's Fee Schedule to add specificity to those definitions.

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on April 1, 2011.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqtrader.com/micro.aspx?id=PHLXfilings,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Exchange's Fee Schedule to provide that an Inactive Nominee must pay the Trading Floor Personnel Registration Fee in order to recover certain administrative expenses associated with Inactive Nominees. An Inactive Nominee's status requires additional administration because the Inactive Nominee is also deemed a clerk for the purpose of Exchange Rule 1090.

Pursuant to By-Law Article X, Section 12–10, to be eligible as an Inactive Nominee, an individual must be approved as eligible to hold a permit in accordance with the Exchange's By-Laws and Rules. An Inactive Nominee does not have any rights or privileges of a permit holder unless and until the Inactive Nominee becomes an effective permit holder and all applicable Exchange fees are paid.[4]

The Inactive Nominee allows a member to have additional flexibility in obtaining coverage on the trading floor. An Inactive Nominee stands ready to assume a membership upon notice by the member requesting that a specific permit be transferred intra-firm on an expedited and temporary basis. This transfer allows an Inactive Nominee to become an effective member of the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term "inactive nominee" means a natural person associated with and designated as such by a member organization and who has been approved for such status and is registered as such with the Membership Department. An inactive nominee shall have no rights or privileges under a permit unless and until said inactive nominee becomes admitted as a member of the Exchange pursuant to the By-Laws and Rules of the Exchange. An inactive nominee merely stands ready to exercise rights under a permit upon notice by the member organization to the Membership Department on an expedited basis. *See* Exchange Rule 1(i).

[4] An Inactive Nominee is currently required to pay $500 every 6 months for the privilege of maintaining an Inactive Nominee Status. *See* the Inactive Nominee Fee on the Exchange's Fee Schedule. *See also* Exchange By-Law Article X, Section 12–10.

Exchange.[5] By way of example, an Inactive Nominee would be activated in the event of an emergency due to illness or other factors. This would allow a member organization to have a full staff available to conduct business on the Exchange trading floor.

An Inactive Nominee is also deemed a clerk for purposes of Exchange Rule 1090.[6] Rule 1090 was enacted to identify categories of persons that are not members of the Exchange and who are not eligible to effect transactions, but are located on the Exchange's trading floor. In order for Rule 1090 to apply to all categories of registered persons located on the Exchange's Options Floor that are generally not eligible to effect transactions, Inactive Nominees are deemed to be Clerks for purposes of that Rule.[7]

Currently, the Exchange assesses a $100 per month Trading Floor Personnel Registration Fee. This fee is imposed on member/participant organizations for individuals who are employed by such member/participant organizations and who work on the Exchange's trading floor, such as clerks, interns, stock execution clerks that handle equity orders that are part of an options contingency order and other associated persons, but who are not registered as members or participants. The Exchange currently does not impose the Trading Floor Personnel Registration Fee on Inactive Nominees because an Inactive Nominee is required to register as a member.

The Exchange is proposing to eliminate the following qualifying language applicable to the Trading Floor Personnel Fee "* * * but who are not registered as members or participants." In addition, the Exchange is proposing to add the following clarifying language "[t]his fee is not imposed on permit holders." The Exchange also proposes to add a parenthetical to indicate that for purposes of the Trading Floor Personnel Registration Fee a Clerk includes an Inactive Nominee. This would add Inactive Nominees to the list of individuals who are employed on the Exchange's trading floor and are subject to the Trading Floor Personnel Registration Fee. The only participants that would not be subject to the fee would be permit holders.

Additionally, the Exchange is proposing to amend the definitions of dividend and merger strategies in Section II of the Fee Schedule titled "Equity Options Fees." The Exchange recently amended the definitions of dividend and merger strategy to provide clarity with respect to the text "prior to the date."[8] The Exchange added the word "immediately" to both definitions to make clear that the timing of the trigger event must occur the first business day prior to the trigger event. For example, with respect to a dividend strategy, the Exchange would interpret the proposed term "immediately" to mean the first business day prior to the date on which the underlying stock goes ex-dividend. With respect to a merger strategy, the Exchange would interpret the proposed term "immediately" to mean the first business day prior to the date on which shareholders of record are required to elect their respective form of consideration. In order that the meaning of immediately is clear, the Exchange is proposing to replace the words "immediately" with "the first business day" in both the dividend and merger strategy definitions in Section II of the Fee Schedule.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act[9] in general, and furthers the objectives of Section 6(b)(4) of the Act[10] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members and other persons using its facilities.

The Exchange believes that applying the Trading Floor Personnel Registration Fee to Inactive Nominees is reasonable because Inactive Nominees are not subject to the permit fees which permit holders are required to pay to maintain their membership. Permit holders are required to pay a monthly Permit Fee in order to transact business at the Exchange. Similar to clerks, interns and stock execution clerks, Inactive Nominees do not pay a permit fee.

The Exchange believes that applying the Trading Floor Personnel Registration Fee to Inactive Nominees is equitable because it would uniformly apply to all inactive nominees and overall the fee would apply to all individuals that do not maintain a permit.

The Exchange believes that it is reasonable to amend the definitions of dividend and merger strategies to provide members with a definition that is clear and unambiguous. In addition, the Exchange believes that the amended definitions would provide members clear guidance on the applicability of the equity option transaction charges and the available caps.

The Exchange believes that the proposed amendments are equitable because the proposed new definitions would apply equally to all members transacting dividend or merger strategies. The Exchange would uniformly apply the definitions to all members who transacted such dividend and/or merger strategies when assessing equity option transaction charges and applying caps.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[11] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

[5] The Inactive Nominee is required to notify the Membership Department in writing prior to the trading day on which they will act in place of a member. The Exchange requires an Inactive Nominee on the Exchange's trading floor to wear a badge which is provided by the Exchange and contains identifying information. The Inactive Nominee cannot simultaneously act as a member and a clerk on the same day.

[6] The term "Clerk " means any registered on-floor person employed by or associated with a member, member organization, participant, or participant organization who is not a member and is not eligible to effect transactions on the Options Floor as a Specialist, Registered Options Trader, or Floor Broker. *See* Exchange Rule 1090. For purposes of Rule 1090, an Inactive Nominee shall be deemed a Clerk.

[7] *See* Securities Exchange Act Release No. 46505 (September 17, 2002), 67 FR 60273 (September 25, 2002) (SR–Phlx–2001–104).

[8] *See* SR–Phlx–2011–20.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4).

[11] 15 U.S.C. 78s(b)(3)(A)(ii).

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2011–32 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2011–32. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2011–32, and should be submitted on or before April 25, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–7814 Filed 4–1–11; 8:45 am]

BILLING CODE 8011–01–P

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64143; File No. SR–NASDAQ–2011–037]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change to Modify Chapter VI, Section 8 of the Exchange's Rules

March 29, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 15, 2011, The NASDAQ Stock Market LLC ("NASDAQ"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASDAQ. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

NASDAQ proposes to modify Chapter VI, Section 8 of the Exchange's rules, dealing with the Nasdaq Opening Cross. Additionally, NASDAQ is proposing to establish a Halt Cross that is nearly identical to the modified Opening Cross on NOM. The Exchange proposes to implement these changes on or about May 31, 2011.

The text of the proposed rule change is available at *http://nasdaq.cchwallstreet.com/,* at NASDAQ's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASDAQ included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASDAQ has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq proposes to modify Chapter VI, Section 8 of the rules governing NOM, and in particular governing the opening of trading at the start of the trading day and at the resumption of trading following a halt. Since NOM was launched on March 31, 2008 Nasdaq has monitored the operation of the market to identify instances where market efficiency can be enhanced.[3] NASDAQ believes that the opening of the market, while currently quite effective, can be further enhanced, and that a Halt Cross would create a more orderly opening following a trading halt.

First, NOM currently employs a series of tie-breakers that resolve instances where multiple prices satisfy the conditions for executing the cross. These tie-breakers govern the calculation of the Current Reference Price that is disseminated to market participants prior to the execution of a cross. The tie-breakers also govern the calculation of the actual cross price. The tiebreakers are criteria that operate in a hierarchy. If one and only one price satisfies the first criterion, the system has no need to move to the second. Conversely, if multiple prices satisfy the first criterion, the algorithm turns to the second criteria and if multiple prices satisfy the second criterion, the algorithm then turns to the third criterion.

NASDAQ is proposing to eliminate what currently serves as the second tie-breaker that NOM employs to establish the Current Reference Price as set forth in Chapter VI, Section 8(a)(2(A)(ii) [sic] and the Cross price as set forth in subsection (b)(2)(B) of that Rule. This tie-breaker resolves price disputes based on minimizing order imbalances. In other words, under the current system, when more than one price satisfies equally the first condition for the Opening Cross, the system will choose that price which minimizes the order imbalance remaining if the cross were to be executed.

NASDAQ has determined to eliminate this tie-breaker because it has not proven useful in augmenting price discovery prior to the cross or in

[3] *See* Securities Exchange Act Release No. 60905 (Oct. 30, 2009), 74 FR 57544 (Nov. 6, 2009)) (SR–NASDAQ–2009–033); Securities Exchange Act Release No. 57822 (May 15, 2008), 73 FR 29800 (May 22, 2008)) (SR–NASDAQ–2008–045); Securities Exchange Act Release No. 57977 (June 17, 2008), 73 FR 35429 (June 23, 2008) (SR–NASDAQ–2008–052).

operating an effective opening cross. NASDAQ initially adopted the imbalance-based tie-breaker based upon its successful use in the equities opening cross. The imbalance-based tie-breaker has not performed well in the options cross during NASDAQ's experience. First, imbalances occur less often in the options market. Additionally, in NASDAQ's experience, such imbalances that do exist generally are much smaller in size than in the equities market. As a result, the size of an imbalance in an options cross rarely provides a meaningful basis for distinguishing between multiple prices at which a cross could occur. NASDAQ believes that elimination of this tie breaker will not hinder price discovery and will allow NASDAQ to focus the cross on the most relevant criteria.

NASDAQ is also proposing to modify the "mid-point" tie-breaker for the price dissemination and cross calculation which are set forth in modified subsections 8(a)(2(A)(iii) [sic] and the Cross price as set forth in subsection (b)(2)(C). Rather than choosing the midpoint of the NBBO, as happens today, the exchange will choose a price that more accurately represents the supply and demand in the market at the time of reference price dissemination and/or auction execution. A minimum threshold price, based on the higher of the last crossed NOM offer or the NBB, will be chosen and a maximum threshold price, based on the lower of the last crossed NOM bid or the NBO. The midpoint (in $0.01 increments) of the minimum threshold price and maximum threshold price will be the price if this tiebreaker is reached.

NASDAQ poses the following illustrations, each based on the assumption that other markets are open and NASDAQ is not:

Example 1:
NBBO: $1.80 × $1.90
Pre Open NOM Book:

Buy contracts	Buy prices	Sell prices	Sell contracts
20	$2.00	$1.82 1.86	10 10

Opening Auction/Reference Price: $1.88—The midpoint of $1.86 and $1.90
- —The last crossed NOM offer of $1.86 is used as the minimum price threshold because it is *higher* than the NBB of $1.80
- —The NBO of $1.90 is used as the maximum price threshold because it is *lower* than the last crossed NOM bid of $2.00

Example 2:
NBBO: $1.80 × $1.90
Pre Open NOM Book:

Buy contracts	Buy prices	Sell prices	Sell contracts
10	$MKT	$MKT	10

Opening Auction Price: $1.85—The midpoint of $1.80 and $1.90
- —For the purpose of this tie-breaker, a price of $MKT is essentially infinity for buy orders and zero for sell orders
- —The NBB of $1.80 is used as the minimum price threshold because it is *higher* than the last crossed NOM offer at $MKT
- —The NBO of $1.90 is used as the maximum price threshold because it is *lower* than the lass [sic] crossed NOM bid at $MKT

Example 3:
NBBO: $1.80 × $1.90
Pre Open NOM Book:

Buy contracts	Buy prices	Sell prices	Sell contracts
10	$1.84	$1.75	10

Opening Auction Price: $1.82—The midpoint of $1.80 and $1.84
- —The NBB of $1.80 is used as the minimum price threshold because it is *higher* than the last crossed NOM offer of $1.75
- —The last crossed NOM bid of $1.84 is used as the maximum threshold because it is *lower* than the NBB of $1.90

NASDAQ believes that this formulation will improve price discovery and execution quality.

Additionally, NASDAQ is proposing to modify subsection (a)(2)(E)(iii) which governs when an indicative message is disseminated with a price of "market." First, such message will be disseminated when there is trading interest with a market price that is not offset, not when there is marketable interest. Second, whether NOM disseminates an indicative price of "market" will not depend upon the available interest being priced lower or higher than the near or far clearing prices. NASDAQ believes that this formulation of "market" will reduce potential confusion about NASDAQ's dissemination practices.

NASDAQ is also proposing to modify subsection (b)(1) of Section 8 to provide increased calibration of the time at which imbalance and indicative price data will begin to be disseminated. Generally, NASDAQ has had positive experience and feedback in beginning indicative data dissemination at 9:25 a.m. EST. Occasionally, however, NASDAQ has received participant feedback that an options class or classes would benefit from a different dissemination period due to the trading characteristics of that option. Accordingly, NASDAQ is proposing to calibrate the start time for data dissemination between 9:20 a.m. and 9:28 a.m. The initial default time for dissemination to being will remain at 9:25. NASDAQ believes that this calibration could benefit investors and poses little risk. When NASDAQ does change the start time for data dissemination, which will be rare, the new time of imbalance dissemination commencement would be published in advance and with equal access on the NASDAQ Trader Web site.

Moreover, NASDAQ is proposing to modify subsection (b)(5) to clarify when an Order Imbalance Indicator will be disseminated just prior to the opening cross. Currently, any time an imbalance remains just prior to the opening cross, NASDAQ disseminates a final Order Imbalance Indicator. Under the proposed modified rule, NASDAQ will disseminate this final Order Imbalance Indicator only when the imbalance contains routable trading interest that is marketable against the NBBO. The exchange believes that non-routable interest is best served by being posted on the exchange after execution of the opening cross.[4] Once the cross is executed and the order is posted, that trading interest will be disseminated as part of the exchange best bid or offer via the consolidated data feed. This broad dissemination will better advertise the trading interest and thereby increase the likelihood of an execution. Additionally, the exchange proposes to clarify that after the opening cross is executed, all orders in the imbalance will be cancelled, routed, or posted in accordance with the entering party's instructions.

[4] NASDAQ states that the goal of NOM's open is to attract as much liquidity as possible to interact with any orders that are marketable at the time of the open. NASDAQ believes that the change to post non-routable orders (at the NBBO) rather than disseminating additional imbalance messages provides more advertisement for the order because it is broadcast over the consolidated quote feed rather than just NASDAQ's proprietary market data feeds. For routable orders NOM is continuing the current process of advertising the order(s) via an imbalance message on NASDAQ's proprietary market data feeds rather than opening immediately and routing the order away. By doing this, NASDAQ's goal is to get the order a price that is equal to or better than the away quoted price. *See* email from Jeffrey S. Davis, Vice President and Deputy General Counsel, NASDAQ OMX Group, Inc., to Carl E. Tugberk, Special Counsel, Division of Trading and Markets, Commission, dated March 29, 2011.

Finally, NASDAQ is proposing to re-establish an Opening Cross to be executed upon the termination of a trading halt.[5] Having operated NOM for almost two years, NASDAQ has determined in its experience that an auction will provide a more orderly opening of the market after a halt. This is particularly true because NOM has attracted significantly higher levels of liquidity, an important ingredient for a successful cross. Accordingly, NASDAQ is proposing to modify Chapter V, Section 4 (Resumption of Trading After a Halt) and various subsections of Chapter VI, Section 8. The Opening Cross will operate in the same manner following a trading halt as it operates at the start of the trading day, including dissemination of the Order Imbalance Indicator, matching algorithm, and posing or routing of interest that remains unexecuted following execution of the opening cross. The Opening Cross for halted options will differ only in the time at which it occurs and the fact that that time is determined pursuant to Chapter V, Section 4.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[6] in general, and furthers the objectives of Section 6(b)(5) of the Act[7] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. Nasdaq believes that the proposal is consistent with this standard because the proposed rule change is designed to improve execution quality at the critical opening of the market both at the start of the trading day and following a trading halt.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

[5] When Nasdaq first proposed its options trading rules, it planned to resume trading by operating a "Halt Cross," which it originally described in Chapter VI, Section 8. Nasdaq later amended the proposed rules to remove the Halt Cross. *See* Securities Exchange Act Release Nos. 57478 (March 12, 2008), 73 FR 14521 (March 18, 2008) (SR–NASDAQ–2007–004 and SR–NASDAQ–2007–080) (approval order regarding NOM Rules including Chapters III and XIV).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve or disapprove such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2011–037 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2011–037. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2011–037, and should be submitted on or before April 25, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–7836 Filed 4–1–11; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64144; File No. SR–NYSEAmex-2011–18]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing of Proposed Rule Change Relating to the Formation of a Joint Venture Between the Exchange, Its Ultimate Parent NYSE Euronext, and Seven Other Entities To Operate an Electronic Trading Facility for Options Contracts

March 29, 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 March 23, 2011, NYSE Amex LLC (the "Exchange" or "NYSE Amex") filed with the Securities and Exchange Commission (the "Commission" or "SEC") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[8] 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.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to form a joint venture between the Exchange, its ultimate parent NYSE Euronext, a Delaware corporation, and the following entities (each, a "Founding Firm"): Citadel Securities LLC ("Citadel"); Goldman, Sachs & Co. ("Goldman Sachs"); Banc of America Strategic Investments Corporation ("BAML"); Citigroup Financial Strategies, Inc. ("Citigroup"); Datek Online Management Corp. ("TD Ameritrade"); UBS Americas Inc. ("UBS"); and Barclays Electronic Commerce Holdings Inc. ("Barclays"). The joint venture will operate an electronic trading facility (the "Options Exchange") that will engage in the business of listing for trading options contracts permitted to be listed on a national securities exchange (or facility thereof) and related activities. The Options Exchange will be operated as a "facility" (as such term is defined in Section 3(a)(2) of the Securities Exchange Act of 1934 (the "Act")) of the Exchange, which will act as the self-regulatory organization ("SRO") for the Options Exchange. The Options Exchange will be operated by NYSE Amex Options LLC (the "Company"), a Delaware limited liability company formed by NYSE Euronext, the Exchange and the Founding Firms and jointly owned by the Exchange and the Founding Firms. The text of the proposed rule change, consisting of the proposed Limited Liability Company Agreement of the Company (the "LLC Agreement") and a proposed Members Agreement of the Company setting forth certain additional terms (the "Members Agreement"), is available at the Exchange, the Commission's Public Reference Room, on the Commission's Web site at *http://www.sec.gov,* and on *http://www.nyse.com.* The LLC Agreement is the source of the Company's governance and operating authority and, therefore, functions in a similar manner as articles of incorporation and by-laws function for a corporation.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is submitting this Proposed Rule Change to the Commission in connection with the proposed formation of a joint venture between the Exchange, its ultimate parent NYSE Euronext and the Founding Firms. The joint venture will operate an electronic trading facility, the Options Exchange, that will engage in the business of listing for trading options contracts permitted to be listed on a national securities exchange (or facility thereof) and related activities.[4] The Options Exchange will be operated as a "facility" (as such term is defined in Section 3(a)(2) of the Act) of the Exchange, which will act as the SRO for the Options Exchange. The Options Exchange will be operated by the Company, the Exchange and the Founding Firms and jointly owned by the Exchange and the Founding Firms. The Exchange will have regulatory responsibility for the activities of the Options Exchange. The Exchange represents that it has adequate funds to discharge all regulatory functions related to the Options Exchange.

The LLC Agreement is the source of the Company's governance and operating authority and, therefore, functions in a similar manner as articles of incorporation and by-laws function for a corporation. No changes to the Exchange's existing rules will be necessary in connection with the establishment of the Company and the operation of the Options Exchange.

Summary

This section contains a summary of certain provisions in the operative documents of the Company. The provisions are more fully described in the sections following the summary.

Structure of the Company

As a limited liability company, ownership of the Company is represented by limited liability company interests in the Company ("Interests"). The holders of interests are referred to as the members of the Company (the "Members"). The Interests represent equity interests in the Company and entitle the holders thereof to participate in the Company's allocations and distributions. Initially, NYSE Amex will own 100% of the preferred non-voting Interests ("Preferred Interests") and 47.2% of the Common Interests,[5] as Class A Common Interests. The Founding Firms will own the remaining 52.8% of the Common Interests, as Class B Common Interests, and no single Founding Firm (including its affiliates) will own Class B Common Interests comprising more than 19.9% of the issued and outstanding Common Interests. The 52.8% ownership of Class B Common Interests will initially be allocated as follows: 14.95% to each of Citadel and Goldman Sachs; 5.0% to each of BAML, Citigroup and TD Ameritrade; 4.9% to UBS; and 3.0% to Barclays.[6]

Capital Contributions

Members may be subject to both voluntary and mandatory capital calls. Mandatory capital calls may be issued by the board of directors of the Company (the "Board"), up to a cap, if the Company requires funds to maintain its status as a facility of an SRO or for other regulatory compliance purposes. In addition, during the first two years after the Company is formed, the Board, with the approval of a simple majority vote of the Board, may solicit voluntary capital calls up to a cap. In addition, a Supermajority Vote of the Board[7] will be able to approve: (i) Any voluntary capital call during the first two years

[4] The activities of the Options Exchange are further described in Section 3.1(b) of the LLC Agreement.

[5] Common Interests consist of Class A Common Interests and Class B Common Interests.

[6] Following the effective date of this Proposed Rule Change, additional Class B Common Interests will be issued to the Founding Firms based, in part, on each Founding Firm's contribution to the annual volume of the Options Exchange from October 1, 2009 to December 31, 2010, as described further under the heading "Volume-Based Equity Plan". The Exchange represents that this issuance of shares to the Founding Firms will not result in any Member (alone or together with its affiliates) other than NYSE Amex exceeding the 19.9% Maximum Percentage (as defined below).

[7] A "Supermajority Vote," as defined in the LLC Agreement, means, with respect to matters submitted to the Board at a validly called and validly noticed meeting, (x) for so long as NYSE Amex's percentage ownership of Common Interests equals or exceeds fifteen percent (15%), (A) the affirmative vote of more than fifty percent (50%) of the directors designated by NYSE Amex entitled to vote thereon and present in person or by proxy and (B) the affirmative vote of more than fifty percent (50%) of those directors designated by Founding Firms entitled to vote thereon and present in person or by proxy, and (y) for so long as NYSE Amex's percentage ownership of Common Interests is less than fifteen percent (15%), the affirmative vote of more than fifty percent (50%) of all directors entitled to vote thereon and present in person or by proxy (which excess of fifty percent (50%) must include more than two-thirds (⅔) of those directors designated by Founding Firms and NYSE Amex in the aggregate entitled to vote thereon and present in person or by proxy).

after the Company is formed in excess of the cap, (ii) any voluntary capital call after the two-year anniversary of the formation of the Company, and (iii) any voluntary capital call that is necessary for the Company to maintain its status as a facility of an SRO or any other regulatory compliance purposes and that is in excess of the cap for mandatory capital calls. Any Member that fails to participate in a mandatory capital call may be subject to certain customary sanctions. Any Member that fails to participate in a voluntary capital call will be diluted in its equity holdings.

Term and Termination

The Company will continue in perpetual existence until dissolved pursuant to the LLC Agreement or the Delaware Limited Liability Company Act, as amended (the "Delaware LLC Act"). The LLC Agreement includes customary provisions for the dissolution of the Company and an orderly liquidation of its business.

Ownership Limitations

No Member, other than NYSE Amex, will be permitted to hold Common Interests in excess of nineteen and nine-tenths percent (19.9%) of the issued and outstanding Common Interests or any lower percentage that may be imposed under applicable law. Any Member that holds Common Interests in excess of 19.9% will be required to dispose of their excess Common Interests following a procedure outlined below under the heading "Ownership Limitations". In addition, any such excess interests will be deemed non-voting until they are transferred to a Member or another person or entity in whose hands they would not be in excess of 19.9% of the issued and outstanding Common Interests and who may vote such Common Interests under applicable law.

Members and Membership

Members will be required to comply with Federal securities laws (to the extent such laws relate to the Company) and cooperate with the SEC and NYSE Amex, pursuant to NYSE Amex's regulatory authority. As explained more fully in the description of Section 7.6 of the LLC Agreement under the heading "Members and Membership" below, the Members may, upon the affirmative written consent of NYSE Amex (in its capacity as SRO) and a Supermajority Vote of the Board (excluding the vote of the director designated by the Member subject to sanction), suspend or terminate a Member's voting privileges in the event: (i) The Member has materially violated a Regulatory Matters Provision (as defined below) in the LLC Agreement or any applicable law; (ii) the Member is subject to any applicable "statutory disqualification" (within the meaning of Section 3(a)(39) of the Act); or (iii) such action is necessary or appropriate in the public interest or for the protection of investors.

Persons or entities may become Members by acquiring Common Interests from an existing Member either pursuant to the transfer provisions described below or with approval by a Supermajority Vote.

A Member may seek to be treated as a "Restricted Member" to comply with any legal restrictions applicable to its holdings of Common Interests. A Restricted Member will be subject to restrictions on the distributions it receives and its Common Interests may be deemed non-voting. This election may be reversed in certain circumstances.

Governance

Day-to-day operations of the Company and the management of its business and affairs will be delegated to the Company's officers and to NYSE Group, Inc. ("NYSE Group"), a subsidiary of NYSE Euronext, in accordance with a services agreement (the "NYSE Euronext Agreement") between NYSE Group and the Company. Under the NYSE Euronext Agreement, NYSE Group will agree to provide the Options Exchange with a broad range of operational and support services.

The Board will be responsible for the oversight of the Company's officers and of NYSE Group's performance under the NYSE Euronext Agreement. The Board will consist of thirteen members. Each Founding Firm so authorized pursuant to the LLC Agreement will have the right to designate one director to the Board—for a total of six directors designated by Founding Firms—and NYSE Amex will have the right to designate the remaining seven directors. The LLC Agreement outlines the basic qualifications of the directors and specifies grounds for their removal.

Most decisions of the Board will be taken by a simple majority vote; however, a specified list of actions will require the approval of a Supermajority Vote. An action requiring a simple majority vote of the Board may be taken even if none of the directors appointed by Founding Firms have voted in favor of such an action. Most matters subject to a Supermajority Vote will be essentially commercial and business issues, such as the offering of additional equity to new investors, certain capital calls and other dilutive measures, or the sale or liquidation of the business. Matters relating to market governance, surveillance, discipline, regulatory compliance, and similar oversight issues will not be subject to Supermajority Vote.

In the event that there are two or fewer directors designated by Founding Firms or in the event that Founding Firms cease to own, in the aggregate, at least twenty percent (20%) of the outstanding Common Interests, most of the matters subject to a Supermajority Vote will cease to require approval by a simple majority of Founding Firms, and will instead require only a simple majority of the Board. In addition, in the event that the Founding Firms cease to own, in the aggregate, at least fifteen percent (15%) of the outstanding Common Interests, only actions that would have a materially and disproportionally disadvantageous effect on the Founding Firms will require a Supermajority Vote.

If NYSE Amex's equity interest falls below fifteen percent (15%), NYSE Amex will lose the right to appoint one (or more) directors (as necessary to result in a board evenly split between NYSE Amex and Founding Firms). A Founding Firm may also lose its right to appoint a director under a variety of circumstances.

The Company will have a Founding Firm Advisory Committee (the "Advisory Committee"), which will advise the Board on certain matters, including new products and market structure.

Transfers of Interests

Transfers of Common Interests will be governed by customary provisions and subject to certain restrictions. In particular, Founding Firms wishing to transfer their Common Interests will be subject to certain limitations on the amount of Common Interests they may transfer in each year. NYSE Amex will have an initial right of first offer to purchase Common Interests that a Founding Firm intends to transfer, at a price at least equal to their fair market value. In the event NYSE Amex does not exercise its right of first offer, the transferring Founding Firm will have the right, subject to certain conditions, to sell its Common Interests to NYSE Amex at a price equal to their fair market value or to sell its Common Interests to a third party. In addition, following the tenth anniversary of the formation of the Company, NYSE Amex will have the right to buy some or all of the Class B Common Interests from the Founding Firms at a price equal to their fair market value.

In the event NYSE Amex intends to transfer any of its Common Interests, the Founding Firms will have certain rights of first offer to purchase these Common Interests. However, no Founding Firm will be able to acquire Common Interests in this way if such acquisition would result in the Founding Firm's equity holdings exceeding nineteen and nine tenths percent (19.9%) of the total equity of the Company.

In the event that NYSE Amex acquires any Class B Common Interests, such Class B Common Interests will automatically be converted into Class A Common Interests. Similarly, in the event any Founding Firms acquire Class A Common Interests, such Class A Common Interests will be automatically converted into Class B Common Interests.

Subject to certain conditions, Members will be obligated to transfer their Common Interests where another Member, acting along or together with other Members, intends to make a transfer of 75% of the then-outstanding Common Interests and the Board, by Supermajority Vote, approves the sale of the Company to a person or entity who is not an affiliate of the Company.

Redemptions of Interests

The Board may, by Majority Vote,[8] redeem the equity interests of a Founding Firm under specified circumstances, such as (i) a transfer of equity interests by such Founding Firm to certain entities specified in the LLC Agreement, (ii) such Founding Firm's failure to satisfy a certain minimum volume threshold in connection with the Plan (as defined below) during certain twelve-month periods or (iii) such Founding Firm's entry into certain economic arrangements as further detailed below under the heading "Redemption of Interests" coupled with such Founding Firm's failure to satisfy a certain minimum volume threshold in connection with the Plan during certain three-month periods.

Certain Regulatory and Compliance Matters

The LLC Agreement includes regulatory provisions that govern the actions of the Company, the Member, NYSE Group, NYSE Euronext, NYSE Amex, as SRO for the Options Exchange, and the employees and directors of each of these entities. The Company, NYSE Euronext, NYSE Group, each Member and the officers, directors, agents and employees of each of these entities will be required to comply with Federal securities laws and cooperate with the SEC and NYSE Amex, pursuant to NYSE Amex's regulatory authority. In addition, the Board will adopt corporate compliance policies that will govern the conduct of employees.

NYSE Amex, as SRO for the Options Exchange, will have broad authority to direct any action that it deems necessary or appropriate to fulfill its obligations as an SRO.

Volume-Based Equity Plan

A volume-based equity plan (the "Plan") will be in place for an initial period of five (5) years and three (3) months following the formation of the Company, pursuant to which each Founding Firm will be entitled to receive, for no additional consideration, a predetermined amount of new Class B Common Interests ("Annual Incentive Shares") based on the degree to which such Founding Firm has satisfied certain minimum volume requirements. The Plan may reallocate the equity interests of the Founding Firms among each other. However, the Plan will not affect the equity holdings of NYSE Amex and the Plan will not increase or decrease the aggregate equity interest of the Founding Firms relative to NYSE Amex. The Company will not allocate Annual Incentive Shares to a Founding Firm if such allocation would result in the Founding Firm holding Common Interests representing in excess of nineteen and nine tenths percent (19.9%) of the total equity of the Company, or any lower percentage that may be imposed under applicable law.

Confidentiality

Members will be subject to customary confidentiality obligations with respect to information relating to the Company or any Member. Customary exceptions to these obligations will allow disclosure of information to the SEC or to NYSE Amex in its capacity as an SRO.

Capital Contributions

Regulatory Capital Contributions

At any time, and from time to time, the Board may *require* each of the Members to participate on a *pro rata* basis in accordance with each Member's Common Interests in calls for additional capital contributions to the Company that may be necessary for the Company to ensure that the Options Exchange maintains, and complies with any regulatory requirements applicable to, its status as a facility of an SRO pursuant to the Act or to satisfy any other regulatory obligation (any such capital call, a "Regulatory Capital Call", and each such contribution, a "Regulatory Capital Contribution"). The Board must provide each Member with not less than thirty (30) days written notice of such Regulatory Capital Call, which notice shall specify (i) the aggregate dollar amount of the Regulatory Capital Call and the individual dollar amount required to be contributed by such Member; (ii) the date by which the Regulatory Capital Contribution must be made; (iii) such Member's percentage ownership of the Common Interests as of the date of the notice; and (iv) the reason for the Regulatory Capital Call.[9]

Voluntary Capital Contributions

At any time during the period commencing on the effective date of the LLC Agreement, and ending on the second anniversary of that effective date, the Board may solicit the Members to make one or more additional capital contributions to the Company (each such solicitation, a "Voluntary Capital Call", and each such contribution, a "Voluntary Capital Contribution") for the benefit of the Company, up to an amount not to exceed $5,000,000 in the aggregate in any twelve (12) month period following the effective date of the LLC Agreement (the "Voluntary Capital Call Cap"). Notwithstanding the foregoing, however, the Board may, by Supermajority Vote, among other things, solicit Voluntary Capital Contributions at any time, if such Voluntary Capital Contribution is necessary for the Company to ensure that the Options Exchange maintains, and complies with any regulatory requirements applicable to, its status as a facility of an SRO pursuant to the Act or to satisfy any other regulatory obligation, to the extent of any amount exceeding the Regulatory

[8] A "Majority Vote" is defined as (i) with respect to matters submitted to the Board at a validly called meeting, the affirmative vote by those directors representing greater than fifty percent (50%) of the directors entitled to vote thereon and present in person or by proxy at such meeting, including, in the event that NYSE Amex's percentage ownership of Common Interests exceeds fifteen percent (15%), the affirmative vote of directors representing greater than fifty percent (50%) of the NYSE Amex directors that are present in person or by proxy at the meeting and (ii) with respect to matters submitted to Members at a validly called meeting, the affirmative vote of those Members holding greater than fifty percent (50%) of the Common Interests entitled to vote thereon and present in person or by proxy at such meeting.

[9] Regulatory Capital Contributions required to be made to the Company by the Members cannot exceed $5,000,000 in the aggregate in any thirty-six (36)-month period following the effective date of the LLC Agreement (the "Regulatory Capital Call Cap").

Capital Call Cap. No Member shall have any obligation at any time to make any Voluntary Capital Contribution.

Non-Funding Members

Any Member that fails to make its Regulatory Capital Contribution on or before the payment due date or any Member that elects to participate in a Voluntary Capital Call but subsequently fails to make its Voluntary Capital Contribution on or before the payment due date, as applicable, will be considered a "Non-Funding Member." The unpaid subscription amount will bear interest payable to the Company equal to a specified default interest rate, from and after the applicable payment due date and until such non-payment has been cured by the Non-Funding Member or the Non-Funded Interest (as defined below) has been purchased by another Member or other person or entity as described in the following paragraph. No such interest paid by a Non-Funding Member to the Company will be treated as a capital contribution but will be treated as interest income of the Company.

In addition to the foregoing, upon thirty (30) days written notice by the Company to any Member that becomes a Non-Funding Member (and provided that such non-payment has not been cured by the Non-Funding Member within such 30-day period), the Board, in its sole discretion, may (i) sell to any of the other Members, on a *pro rata* basis, all or any portion of (A) in the case of a Voluntary Capital Call, the Common Interests that the Non-Funding Member would have received had the amount requested been paid in full and (B) in the case of a Regulatory Capital Call, the amount of Common Interests corresponding to the amount requested (in both cases, "Non-Funded Interests"); or (ii) in the event that the entire amount of Non-Funded Interests of the Non-Funding Member is not acquired by the Members pursuant to clause (i) above, so notify the Members and designate one or more persons or entities (subject to the agreement of such persons or entities), which may include Members, to acquire all or any portion of the Non-Funding Member's Non-Funded Interests not so acquired; *provided* that (A) any purchase of such Non-Funded Interest by any Member, in whole or in part, shall result in a corresponding increase to such Member's Common Interest and (B) any purchase of such Non-Funded Interest by a party that is not a Member shall be treated as a transfer by the Non-Funding Member to such person and shall be subject to conditions and limitations in the LLC Agreement relating to admission of Members and transfers of Interests.

Term and Termination

Pursuant to Section 2.3 of the LLC Agreement, the Company shall continue in perpetual existence until dissolved pursuant to the LLC Agreement or the Delaware LLC Act. However, Section 12.1 of the LLC Agreement provides that the Company may be dissolved in the event of (i) a Supermajority Vote by the Board to that effect, (ii) the sale or other disposition of all or substantially all of the Company's assets and the receipt of all consideration therefrom, or (iii) the entry of a decree of judicial dissolution under Section 18–802 of the Delaware LLC Act (involving a situation where it is not reasonably practicable to carry on the business in conformity with a limited liability company agreement); *provided* that no Member may make an application for the dissolution of the Company pursuant to Section 18–802 of the Delaware LLC Act without approval by a Supermajority Vote of the Board. The dissolution of the Company will be effective as of the day on which the event occurs giving rise to the dissolution, but the Company will not terminate until the winding up of the Company has been completed, the assets of the Company have been distributed as provided in Section 12.2 of the LLC Agreement (see following paragraph) and the Certificate of Formation of the Company has been canceled.

Section 12.2 of the LLC Agreement provides that, upon the termination and dissolution of the Company, the Board must take all steps necessary and proper to effect an orderly liquidation of the Company's business and shall apply and distribute the net proceeds of such liquidation in the following order of priority: (a) *First,* to creditors, including Members who are creditors (but excluding liabilities to Members for distributions under Section 18–606 of the Delaware LLC Act), to the extent otherwise permitted by applicable law, in satisfaction of liabilities of the Company (other than contingent, conditional or unmatured liabilities for which reserves are established by the Board), whether by payment or the making of reasonable provision for payment thereof, (b) *second,* to the establishment of any reserves determined by the Board to be reasonably necessary or appropriate to provide for any contingent, conditional or unmatured Company liabilities and obligations (which reserves may be paid over to a bank or trust company, as escrow agent, to be held by such escrow agent for the purpose of disbursing such reserves in payment of the referenced liabilities and obligations) and, at the expiration of such period as the Board shall deem advisable, to pay over the balance thereafter remaining for distribution, (c) *third,* to the holder of Preferred Interests, to the extent of the Priority Claim (as defined below), and (d) *finally,* subject to such other arrangements as the Members may agree, to the Members, *pro rata,* in accordance with their percentage ownership of Common Interests; subject to any applicable limitations imposed by a Member's maximum percentage of distributions as provided in Section 7.5 of the LLC Agreement or such other arrangements as the Members may agree. In the latter situation, any distribution so limited shall be made to the other Members in proportion to their respective percentage ownership of Common Interests.

The "Priority Claim" is the right of the Preferred Interest holder, upon any liquidation, dissolution or sale of the Company or other similar event, to receive the sum of (i) the amount of the non-cash capital contribution for the Preferred Interests identified on Schedule A–1 to the Amended and Restated Contribution Agreement dated as of February 22, 2011, by and among NYSE Euronext, the Company and the Members (the "Contribution Agreement"), reduced by the amount(s) paid by the Company (x) in respect of any redemptions of Preferred Interests pursuant to Section 11.5(a) of the LLC Agreement as described herein under "Redemption of Interests" or (y) pursuant to Section 3.2(i) of the Members Agreement relating to certain redemptions of Class B Common Interests *plus* (ii) any unpaid amount that has accrued on the Preferred Interests. In any winding up and dissolution of the Company, NYSE Amex may elect to receive Company property-in-kind, *provided* that the fair market value of such property-in-kind will be determined by a Supermajority Vote of the Board or, if the Board is unable to so agree, pursuant to an appraisal thereof by an independent valuation firm approved by a Supermajority Vote of the Board. To the extent the fair market value of the Company property distributed to NYSE Amex is in excess of the amount it would otherwise receive under Section 12.2 of the LLC Agreement, it shall make a cash payment to the Company in the amount of the difference, with the proceeds to be distributed, *pro rata,* to all the Members other than NYSE Amex.

Section 12.4 of the LLC Agreement establishes that, upon the occurrence of an event of dissolution as described

above, the Company shall be dissolved unless, within fifteen (15) days of such event, those Members representing greater than fifty percent (50%) of the Common Interests agree in writing to continue the business of the Company.

Ownership Limitations

Section 4.9 of the LLC Agreement provides that no Member (other than NYSE Amex alone or, subject to receipt of SEC approval pursuant to the rule filing process under Section 19(b) of the Act, together with its Permitted Transferees [10]) shall be permitted to own or vote (alone or together with its affiliates), directly or indirectly, Common Interests in excess of the lower of (x) nineteen and nine-tenths percent (19.9%) of the then issued and outstanding Common Interests (the "19.9% Maximum Percentage") or (y) the maximum amount of Common Interests such Member (alone or together with its affiliates) may own or vote under applicable law and without subjecting the Company to material regulatory obligations or material liabilities or a reasonable likelihood of material regulatory obligations or material liabilities arising as a result of the extent of such ownership or voting interest (such maximum Common Interests a Member (alone or together with its affiliates) may own or vote under this clause (y), the "Alternate Maximum Percentage", and the amount in excess thereof or in excess of the 19.9% Maximum Percentage, as applicable, "Excess Interests").

In the event that the Company believes that a Member other than NYSE Amex (alone or together with its affiliates) has or may, as a result of then-contemplated events, in the near future, have Excess Interests (other than as a result of exceeding the 19.9% Maximum Percentage), the Company shall provide such Member with notice of this belief, setting forth the basis for the Company's position, and the Company and such Member shall discuss in good faith the proposed determination. If the Company and such Member agree that such Member (alone or together with its affiliates) holds Excess Interests (other than as a result of exceeding the 19.9% Maximum Percentage), the Member must, within a reasonable period after such agreement is reached, implement remedial measures including those described in the paragraph immediately below. If the Company and a Member fail to reach agreement as to whether the Member (alone or together with its affiliates) holds Excess Interests (other than as a result of exceeding the 19.9% Maximum Percentage), the Company shall be entitled to bring a dispute resolution proceeding in accordance with the dispute resolution provisions in Article XV of the LLC Agreement to resolve the dispute; and in the event the Company prevails in any such dispute resolution proceeding, the applicable Interests shall be deemed to be Excess Interests for purposes of the remedial measures described in the paragraph immediately below. In the event a Member (alone or together with its affiliates) holds Excess Interests as a result of exceeding the 19.9% Maximum Percentage, the Member shall, subject to applicable law, implement the remedial measures described in the paragraph immediately below and such Excess Interests shall automatically and immediately constitute Non-voting Common Interests [11] as described in and subject to the paragraph immediately below.

A Member (alone or together with its affiliates) that (x) holds Excess Interests as a result of exceeding the 19.9% Maximum Percentage or (y) pursuant to the paragraph immediately above, agrees that it holds or is found to hold Excess Interests as a result of exceeding the applicable Alternate Maximum Percentage shall promptly implement the following remedial measures accordingly and in a manner consistent with the LLC Agreement and applicable law: (i) the offer of such Excess Interests at a price equal to the *pro rata* portion of the fair market value of the Member's (or its affiliates', if applicable) Common Interests attributable to the Excess Interests: *first,* to the remaining Members (other than NYSE Amex) *pro rata* in accordance with their relative Common Interests; *second,* if the remaining Members do not purchase all such Excess Interests, to NYSE Amex; and *third,* if NYSE Amex does not purchase all such Excess Interests, to any other person or entity approved by NYSE Amex (which approval must not be unreasonably withheld, conditioned or delayed), subject to the conditions and limitations in the LLC Agreement on the admission of Members, (ii) subject to applicable law, retention of the Excess Interests as Non-voting Common Interests, pursuant to the provisions of Section 7.5 of the LLC Agreement on Restricted Members (as defined and discussed below), or (iii) except in the case of Excess Interests arising as a result of such Member (alone or together with its affiliates) exceeding the 19.9% Maximum Percentage, any other remedial action discussed in good faith by the Member and the Company, in each case, as determined by the relevant Member to be least burdensome. A Member's Excess Interests arising as a result of such Member (alone or together with its affiliates) exceeding the 19.9% Maximum Percentage shall automatically and immediately constitute, absent regulatory approval (including SEC approval pursuant to the rule filing process under Section 19(b) of the Act) to the contrary, Non-voting Common Interests and the Aggregate Class A Voting Allocation and Aggregate Class B Voting Allocation (each as defined below) shall be adjusted accordingly. Such an adjustment may have the effect of concentrating the Common Interest Percentages of the other Members. The requirements of this provision shall be applied iteratively in the event that any such adjustment would result in any Member (alone or together with its affiliates) exceeding the 19.9% Maximum Percentage. Subject to applicable law, Excess Interests of a Member that constitute Non-voting Common Interests solely as a result of such Member (alone or together with its affiliates) exceeding the 19.9% Maximum Percentage shall cease to constitute Non-voting Common Interests (and the Aggregate Class A Voting Allocation and Aggregate Class B Voting Allocation shall be adjusted accordingly) in the event that, and to the extent that, (I) such Member (or, if applicable, its affiliates) transfers, in accordance with Article XI (Transfers) of the LLC Agreement, such Excess Interests to another Member or third party that (taking into account such Excess Interests then being transferred) does not hold Common Interests that would constitute Excess Interests in the hands of such transferee Member or third party due to such transferee Member or third party (in each case, alone or together with its affiliates) exceeding the 19.9% Maximum

[10] A "Permitted Transfer" is defined in the LLC Agreement as (i) any transfer of Interests by any Member among any of its affiliates, (ii) any transfer by merger, consolidation or similar business combination or through the acquisition of substantially all of the assets and liabilities of the transferring party (except for a transfer to a person or entity whose assets subsequent to the transfer would be comprised principally of Interests) or (iii) any transfer required under, or effected to enable a Member to be in compliance with, applicable law or the requirements of a governmental authority or any SRO. Any transferee under clauses (i) and (ii) of the previous sentence is a "Permitted Transferee," and any transferee under clause (iii) of the previous sentence is a "Required Transferee."

[11] "Non-voting Common Interests" are defined in the LLC Agreement as Class B Common Interests (i) designated as non-voting at the time of issuance; (ii) deemed to be non-voting pursuant to Section 7.5(b) or Section 7.5(d) of the LLC Agreement; or (iii) held by a Member, constituting Common Interests in excess of the 19.9% Maximum Percentage, absent SEC approval.

Percentage or (II) such Excess Interests cease to be Excess Interests (due to such Member (alone or together with its affiliates) exceeding the 19.9% Maximum Percentage) because of a reduction in such Member's Common Interest Percentage.[12] Notwithstanding the foregoing, nothing in Section 4.9 of the LLC Agreement limits Section 7.5 of the LLC Agreement (Restricted Members) or the ability of a Member to make a Restricted Member Election (as defined below), which shall impose separate and additional limitations with respect to Common Interests covered thereby. NYSE Amex may assign to one of its affiliates the right to purchase Excess Interests pursuant to clause (i) of this paragraph, subject to providing notice to, and receiving approval from, the SEC under Section 19(b) of the Act.

In the event that material regulatory obligations or material liabilities of the Company arise as a result of a Member (alone or together with its affiliates) holding Excess Interests (other than as a result of exceeding the 19.9% Maximum Percentage) and such material obligations or liabilities may be mitigated by the Member becoming a Restricted Member pursuant to Section 7.5(a) of the LLC Agreement, the Member will be deemed to have elected to become a Restricted Member upon such obligation or liability arising; *provided* that, to the extent permitted under applicable law and consistent with the proviso in Section 7.5(a)(iii) of the LLC Agreement relating to the reversal of an election to be treated as a Restricted Member, the Member may revoke such election to be a Restricted Member in connection with either (i) the sale of such Member's Interests or (ii) any other remedial action taken by such Member, each as described in the preceding paragraph.

[12] "Common Interest Percentage" is defined in the LLC Agreement as (i) with respect to NYSE Amex or a transferee of Class A Common Interests, the product of (w) the Aggregate Class A Economic Allocation multiplied by (x) a fraction, (A) the numerator of which shall be the number of Class A Common Interests then held by NYSE Amex or the transferee and (B) the denominator of which shall be the number of Class A Common Interests then held NYSE Amex and all such transferees, and (ii) with respect to any Founding Firm or a transferee of Class B Common Interests, the product of (y) the Aggregate Class B Economic Allocation multiplied by (z) a fraction, (A) the numerator of which shall be the number of Class B Common Interests then held by such Founding Firm or the transferee, including, for the purpose of determining any economic entitlement or entitlement to designate a director, any Non-voting Common Interests and (B) the denominator of which shall be the number of Class B Common Interests then held by all Founding Firms and all such transferees, including, for the purpose of determining any economic entitlement or entitlement to designate a director, any Non-voting Common Interests.

Members and Membership

Section 7.3 of the LLC Agreement provides that, except as otherwise provided in Article XI (Transfers) of the LLC Agreement (discussed below), persons or entities that acquire Common Interests or Preferred Interests in accordance with the terms of, and subject to the restrictions provided in, the LLC Agreement may be admitted from time to time as new Members by Supermajority Vote of the Board, subject to the following: (a) Any new Member must make a capital contribution in such amount and on such terms as the Board deems appropriate based upon the needs of the Company, the net value of its assets, the Company's financial condition, and the benefits anticipated to be realized by such additional Member; and (b) the additional Member must agree to be bound by the terms of the LLC Agreement and the Members Agreement. In addition, pursuant to Section 7.4 of the LLC Agreement, each Member must maintain commercially reasonable policies and procedures, taking into account the structure and organization of its operations, to prevent disclosure of confidential information of the Company by any director, alternate director, observer to the Board or any committee of the Board or member of the Advisory Committee (as defined below) to any other individual appointed by such Member to perform a similar role with respect to, or who is an officer or employee of, a Specified Entity.[13] Any individual designated to be a director, alternate director, observer to the Board or any committee of the Board, or member of the Advisory Committee may be required to acknowledge in writing the foregoing requirements.

As referenced above, the number of Class A Common Interests and Class B Common Interests that will be issued and outstanding to the initial Members will result in (i) the percentage of the aggregate number of Common Interests represented by the Class A Common Interests (the "Aggregate Class A Economic Allocation") initially being equal to 47.2% and (ii) the percentage of the aggregate number of Common Interests represented by the Class B Common Interests (the "Aggregate Class B Economic Allocation") initially being equal to 52.8%. The Class A Common Interests will also initially represent 47.2% of the aggregate number of Common Interests entitled to vote (such percentage, the "Aggregate Class A Voting Allocation" and together with the Aggregate Class A Economic Allocation, the "Aggregate Class A Allocation"), while the Class B Common Interests will initially represent 52.8% of the aggregate number of Common Interests entitled to vote (such percentage, the "Aggregate Class B Voting Allocation" and together with the Aggregate Class B Economic Allocation, the "Aggregate Class B Allocation"). From time to time, the Aggregate Class A Economic Allocation and the Aggregate Class A Voting Allocation shall be separately or together subject to adjustment upwards or downwards, as applicable, in accordance with the provisions of the LLC Agreement and/or the Members Agreement, as will the Aggregate Class B Economic Allocation and the Aggregate Class B Voting Allocation.

Restricted Members

Section 7.5 of the LLC Agreement provides that each Member (other than NYSE Amex alone or together with its Permitted Transferees) then owning (alone or together with its affiliates) any Excess Interests (other than as a result of exceeding the 19.9% Maximum Percentage) or then owning an Interest entitling that Member to distributions in excess of the Member's Maximum Percentage (as defined below) of the distributions (the "Capped Distribution Amount") then being made to all Members may from time to time make an irrevocable election ("Restricted Member Election") (but subject to

[13] "Specified Entity" is defined in the LLC Agreement as (i) any U.S. securities option exchange (or facility thereof) or U.S. alternative trading system on which securities option contracts are executed (other than NYSE Amex or any of its affiliates) that lists for trading any option contract that competes with a contract listed for trading on the Options Exchange or a contract that is contemplated by the then-current business plan of the Company to be listed for trading by the Options Exchange within ninety (90) days of such date, (ii) any person or entity that owns or controls a U.S. securities option exchange or U.S. alternative trading system described in clause (i), and (iii) any affiliate of a person or entity described in clause (i) or (ii) above; *provided* that, in the event of a change in applicable law permitting the execution of transactions in exchange-listed securities options otherwise than on a national securities exchange or facility thereof (including, but not limited to, internalization of orders for exchange-listed securities options or the execution of such orders on an alternative trading system), (x) a system operated by or on behalf of a Founding Firm or its affiliates for purposes of the internalization or crossing of: (i) Orders of customers of such Founding Firm or its affiliates, (ii) orders of such Founding Firm or its affiliates or (iii) orders routed from a retail broker-dealer or retail brokerage unit, shall not be considered a Specified Entity and (y) in addition to the matters covered in clause (x), NYSE Amex and the Founding Firms will negotiate in good faith the terms of an exception from the definition of Specified Entity for any alternative trading system owned solely by an individual Founding Firm or its affiliates that performs order crossing in a manner that does not substantially compete with the Options Exchange in terms of market share and other relevant factors.

reversal under certain specific circumstances), by written notice to the Company, to be treated for purposes of the LLC Agreement as a "Restricted Member," solely with respect to such Excess Interests or Capped Distribution Amount. "Maximum Percentage" means, for a Member, the lesser of the 19.9% Maximum Percentage and such Member's Alternate Maximum Percentage, if any. With respect to each Restricted Member, for so long as the election to be a Restricted Member remains in effect:

(i) In the event of any distribution of Class B Common Interests, at the request of that Restricted Member by written notice to the Company, the Restricted Member will receive in lieu of Class B Common Interests, at the Company's sole option based on a Majority Vote of the disinterested directors, either (x) the cash equivalent of such distribution to be paid by the Company within ninety (90) days of the date such distribution would have otherwise been made, and the allocations of net profits and losses shall be adjusted accordingly to reflect each Member's share of such distribution or (y) a promissory note from the Company (i) in a principal amount equivalent to the amount of such distribution; (ii) having a maturity determined by Supermajority Vote of the disinterested directors not to exceed 5 years; and (iii) having additional commercially reasonable terms to be determined by Supermajority Vote of the disinterested directors that are consistent with customary market practice (*provided* that the Company shall not enter into any contractual restrictions that specifically and directly limit the Company's ability to repay or redeem such promissory note except as required under applicable law), and the allocations of net profits and losses shall be adjusted accordingly to reflect each Member's share of such distribution;

(ii) In the event of any distribution that is *not* a distribution of Class B Common Interests, and if such Restricted Member has so elected, then the amount of any distribution that would otherwise be made to the Restricted Member in excess of the Capped Distribution Amount shall be distributed to all other Members who are entitled to participate in such distribution on a *pro rata* basis with respect to the Common Interests held by such Members and the allocations of net profits and losses shall be adjusted accordingly to reflect each Member's share of such distribution; *provided* that with respect to any Restricted Member, including in the event that such distribution permits any Member to elect to be treated as a Restricted Member and such Member so elects, the distributions to any such Restricted Member shall not exceed the Capped Distribution Amount; and

(iii) Such Restricted Member agrees to transfer the proceeds of any transfer of Common Interests by that Restricted Member (taking into account any proceeds received by the Restricted Member for previous transfers) in excess of the Restricted Member's Maximum Percentage of the proceeds of such transfer of Common Interests to all other Members who are not Restricted Members on a *pro rata* basis with respect to the number of Common Interests held by such Members; *provided* that with respect to any Restricted Member, including in the event that such transfer permits any Member to elect to be treated as a Restricted Member and such Member so elects, the amount transferred to any such Restricted Member shall be limited so as to not cause the Restricted Member's total ownership interest to exceed the Restricted Member's Maximum Percentage or the Capped Distribution Amount, as applicable.

An election to become a Restricted Member will be binding upon the Restricted Member and its direct and indirect transferees, *provided, however,* that the Restricted Member, in its capacity as a Member and a Restricted Member, may (x) upon written notice to the Company at any time and without precondition, reverse its election with respect to paragraph (ii) above and (y) only under the following circumstances, reverse its election to be treated as a Restricted Member upon written notice to the Company:

(A) The Restricted Member owns such Restricted Member's Maximum Percentage or less of the Common Interests then issued and outstanding (in which case such reversal may occur without any further consent of the Board or any other condition precedent);

(B) With the written approval of the Board granted in the sole discretion of the majority of the disinterested directors; or

(C) The Restricted Member provides the Board with appropriate written notice that such Common Interests have been transferred to the extent permissible under the LLC Agreement (1) as part of a widespread public or private offering where no single transferee (together with its affiliates) acquires more than 2% of the total Common Interests, (2) to an underwriter for the purpose of underwriting a widely distributed public or private offering, (3) in one or more open market transactions effected on a stock exchange, electronic communication network or similar execution system, or in the over-the-counter market (which may include a sale to one or more broker-dealers acting as market makers or otherwise intending to resell the Common Interests sold to them in accordance with their normal business practices), (4) to an acquirer which has acquired control of a majority of the total Common Interests, or (5) with the written approval of the U.S. Board of Governors of the Federal Reserve System or its staff.

Common Interests with a voting interest in excess of the Maximum Percentage of the then issued and outstanding Common Interests of each Member who elects to be treated as a Restricted Member will be deemed Non-voting Common Interests, and the Aggregate Class A Voting Allocation and Aggregate Class B Voting Allocation will be adjusted accordingly. Non-voting Common Interests will not be included in determining whether the requisite percentage in interest of the Members have consented to, approved, adopted or taken any action pursuant to the LLC Agreement. Except as provided in this paragraph, Non-voting Common Interests will be identical in all regards to all other Common Interests held by Members.

A Member may elect to become a Restricted Member with respect to any of its Class B Common Interests, even if such Class B Common Interests do not constitute Excess Interests. Upon such election, such Class B Common Interests shall be deemed Non-voting Common Interests and the provisions of the preceding paragraph will apply with respect to such Member, *provided* that such Member may only reverse such election under the circumstances described in subparagraph (C) above.

The LLC Agreement specifies that, absent SEC approval, the Excess Interests of a Member (other than NYSE Amex alone or together with its affiliates) arising as a result of such Member (alone or together with its affiliates) exceeding the 19.9% Maximum Percentage shall immediately and automatically constitute Non-voting Common Interests.

Section 7.6 of the LLC Agreement provides that the Company and, to the extent it relates to the Company, each Member, agrees to comply with the Federal securities laws and the rules and regulations promulgated thereunder and to cooperate with NYSE Amex pursuant to its regulatory authority and with the SEC. Furthermore, each Member must take into consideration whether its actions would cause the Options Exchange or the Company to

engage in conduct that fosters and does not interfere with NYSE Amex's or the Company's ability to carry out their respective responsibilities under the Act and to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest. The Members may, upon (A) the affirmative written consent of NYSE Amex (in its capacity as SRO) and (B) a Supermajority Vote of the Board (excluding the vote of the director designated by the Member subject to sanction), suspend or terminate a Member's voting privileges, including the ability to designate directors pursuant to Section 8.1(d) of the LLC Agreement in the event: (i) The Member has materially violated any "Regulatory Matters Provision" [14] or any applicable law; (ii) the Member is subject to any applicable "statutory disqualification" (within the meaning of Section 3(a)(39) of the Act); or (iii) such action is necessary or appropriate in the public interest or for the protection of investors. Prior to any suspension or termination, (x) the Company will deliver to the Member a written notice specifying in reasonable detail the basis for such proposed suspension or termination and (y) representatives of the Member will be given an opportunity to address the Board regarding such proposed suspension or termination prior to the Board voting thereon. In the event of a suspension or termination, the director (if any) designated by such Member will immediately cease to be a director and the authorized number of directors will be reduced accordingly.

Article IX of the LLC Agreement provides that meetings of the Members may be called by (i) the Board or (ii) by a Member or Members holding not less than thirty-five percent (35%) of the then issued and outstanding Common Interests. Written or printed notice stating the place, day and hour of the meeting and, in the case of a special meeting of the Members, describing the purposes for which the meeting is called shall be delivered not fewer than ten (10) days, but not more than sixty (60) days, before the date of the meeting. Such notice must include an agenda specifying in reasonable detail the matters to be discussed at the meeting and identifying any specific items to be considered that require a Supermajority Vote. Except as otherwise provided in the LLC Agreement or under applicable law, Members which both (x) represent greater than forty-five percent (45%) of the Common Interests outstanding and are entitled to vote at such time and (y) constitute an absolute majority of Members entitled to vote at such time, represented in person or by proxy, shall constitute a quorum of Members for purposes of conducting business. Except as otherwise required by the LLC Agreement or applicable law, resolutions of the Members at any meeting of Members shall be adopted by Majority Vote of the Members at such meeting at which a quorum is present.

Section 9.3 of the LLC Agreement prohibits Members from entering into voting trust agreements with respect to their Common Interests.

Governance of the Company

Section 8.1(a) of the LLC Agreement establishes the Board, which will be a "manager" of the Company within the meaning of the Delaware LLC Act. Each director shall be entitled to one vote. Section 8.1(b) of the LLC Agreement provides that the Board shall delegate the day-to-day operation of the Company and the management of the business and affairs of the Company to the officers of the Company and NYSE Group, a wholly-owned subsidiary of NYSE Euronext, in accordance with the NYSE Euronext Agreement pursuant to which NYSE Group will perform certain information technology, operational, financial, compliance, management and other general corporate support services for the Company (except as otherwise provided in the LLC Agreement). The Board shall oversee the conduct and performance of the duties so delegated.

Pursuant to Section 8.1(c) of the LLC Agreement, the authorized number of directors is thirteen (13) as of the effective date of the LLC Agreement. The Board may be expanded by Supermajority Vote of the Board to include any number of independent directors as may be required by applicable law, *provided* that in the event the Board is so expanded, the Board shall determine, by Supermajority Vote, applicable independence criteria in accordance with, among other appropriate considerations, the requirements of applicable law which shall include, for this purpose, SEC guidelines, if any, regarding such criteria. The directors shall be appointed by the Members as described in the immediately following paragraphs and shall hold office until their respective successors are elected and qualified or until their earlier death, resignation or removal. In the event that the Company is not required to appoint independent directors, the Company will authorize one individual to be designated by NYSE Amex to participate as a non-voting observer in meetings of the Board, so long as the Options Exchange is operated as a facility of NYSE Amex.

Under Section 8.1(d) of the LLC Agreement, each Member agrees that it shall vote all of such Member's Common Interests and any other voting equity securities of the Company over which that Member has voting control and shall take all other actions reasonably necessary or desirable within that Member's control (whether in the Member's capacity as a Member, director, member of a Board committee or officer or otherwise, and including attendance at meetings in person or by proxy for purposes of obtaining a quorum and execution of written consents in lieu of meetings), and the Company shall take all necessary and desirable actions within its control (including calling special Board and Member meetings), so that the following persons shall be elected to the Board:

(i) Up to seven (7) representatives designated by NYSE Amex who shall initially be as specified in the LLC Agreement and, after the effective date of the LLC Agreement, such other persons who are designated by NYSE

[14] A "Regulatory Matters Provision" is defined in the LLC Agreement as any of Section 4.9 of the LLC Agreement with respect to provisions related to the 19.9% Maximum Percentage; Section 7.6 of the LLC Agreement relating to Member compliance with the federal securities laws and cooperation with NYSE Amex pursuant to its regulatory authority and with the SEC; Section 8.1(d)(i) of the LLC Agreement relating to designation of directors to the Board; Sections 8.1(e)(ii) and 8.1(e)(iii) of the LLC Agreement relating to a director's suspension or removal in certain circumstances; Section 8.1(h) of the LLC Agreement relating to the qualification of directors; Section 8.1(m) of the LLC Agreement relating to director compliance with the federal securities laws and cooperation with NYSE Amex pursuant to its regulatory authority and with the SEC; Section 9.3 of the LLC Agreement prohibiting Members from entering voting trust agreements with respect to their Common Interests; Section 11.8 of the LLC Agreement relating to (i) notice and rule filing requirements to the SEC on any acquisition of Interests that results in a Member's ownership of Common Interests reaching certain threshold levels and (ii) requirements regarding direct and indirect ownership of the Company; Section 13.2(c) of the LLC Agreement granting NYSE Amex and the SEC access to the books and records of the Company; Section 14.1(j) of the LLC Agreement providing for the confidentiality of Confidential Information (as defined below) pertaining to the self-regulatory functions of NYSE Amex; Section 14.1(k) of the LLC Agreement granting NYSE Amex and the SEC access to confidential information; Section 16.1 of the LLC Agreement relating to regulatory approvals and compliance; or Section 16.10 of the LLC Agreement relating to amendments to the LLC Agreement and the requirement to file such amendments with the SEC.

Amex from time to time pursuant to this clause (i), one of whom may, in NYSE Amex's sole discretion, be the chief executive officer of the Company; *provided* that (x) upon any expansion of the Board to include any independent directors as described above, for so long as NYSE Amex's percentage ownership of Common Interests equals or exceeds fifteen percent (15%), NYSE Amex shall have the right to designate a number of additional directors equal to the aggregate number of independent directors added to the Board pursuant to Section 8.1(c) of the LLC Agreement or, if fewer, the largest number of additional directors allowable under applicable law, and the authorized number of directors shall be correspondingly increased and (y) upon any expansion of the Board to include any additional directors appointed by Members other than NYSE Amex pursuant to the LLC Agreement, NYSE Amex shall have the right to designate a number of additional directors equal to the aggregate number of directors so added to the Board and the authorized number of directors shall be correspondingly increased; *provided, further,* that each individual designated by NYSE Amex to serve as a director shall be reasonably acceptable to the Founding Firms; and *provided, further,* that NYSE Amex will appoint at least such number (not to exceed seven (7) directors) as is necessary to ensure that no single Founding Firm's designees to the Board constitute twenty percent (20%) or a greater percentage of the total number of directors on the Board; and

(ii) One (1) representative designated by each Founding Firm authorized to designate a representative pursuant to Section 8.1(d)(ii) of the LLC Agreement, who shall initially be as specified in the LLC Agreement and, after the effective date of the LLC Agreement, such other person who is designated by such Founding Firm from time to time pursuant to this clause (ii); *provided* that each individual designated by the Founding Firms to serve as a director shall be reasonably acceptable to NYSE Amex; *provided, further,* that if such Founding Firm's percentage ownership of Common Interests falls below, in the case of Goldman Sachs and Citadel, five percent (5%), and in all other cases, three percent (3%), the individual designated by such Founding Firm shall immediately cease to be a director, such Founding Firm shall cease to be authorized to designate a director, and the authorized number of directors shall be reduced accordingly; *provided, further,* that if such Founding Firm's Class B Common Interests are subject to redemption, the Board (A) may require the individual designated by such Founding Firm to resign, (B) may permanently, or for such shorter period as the Board may designate, disqualify such Founding Firm from designating representatives to the Board pursuant to this clause (ii), and (C) pursuant to subclause (A) or (B) above, reduce the authorized number of directors accordingly; *provided* that the affected director shall not be authorized to participate in any such decision by the Board;

(iii) In the event the Board is expanded to include independent directors as described above and NYSE Amex's percentage ownership of Common Interests equals or exceeds fifteen percent (15%), NYSE Amex shall designate one-half of the total number of independent directors to be so included, in consultation with the Founding Firms, and the Founding Firms shall designate one-half of the total number of independent directors to be so included, in consultation with NYSE Amex; *provided* that if the number of independent directors to be so included is odd, NYSE Amex shall designate a number of independent directors that is equal to the number of independent directors designated by the Founding Firms plus one; *provided further* that if (A) two or fewer Members have the right to designate a director pursuant to clause (ii) above or (B) the aggregate Common Interests held by all Founding Firms, excluding any Non-voting Common Interests, falls below fifteen percent (15%) of the then issued and outstanding Common Interests, NYSE Amex shall have the exclusive right to designate all of the independent directors. The independent directors designated by NYSE Amex and the Founding Firms shall be subject to approval by a Supermajority Vote of the Board. In the event that NYSE Amex's percentage ownership of Common Interests is less than fifteen percent (15%), the independent directors shall be appointed by mutual agreement of NYSE Amex and a majority of the Founding Firms; and

(iv) If and for so long as NYSE Amex's then-current percentage ownership of Common Interests is less than fifteen percent (15%), the number of directors designated by NYSE Amex shall be decreased to a number equal to the then-current number of directors designated by Founding Firms, the aggregate number of representatives of the Board to be designated by NYSE Amex shall be decreased accordingly, and the number of directors shall be reduced accordingly, until such time as either (x) one or more Founding Firms become eligible to designate a director, in which case the aggregate number of representatives of the Board to be designated by NYSE Amex shall simultaneously be increased to a number equal to the number of directors designated by Founding Firms or (y) NYSE Amex's then-current percentage ownership of Common Interests again equals or exceeds fifteen percent (15%), in which case the aggregate number of representatives of the Board to be designated by NYSE Amex shall be increased to a number equal to the number of directors designated by Founding Firms plus one (1) and, in each case, the number of directors shall be increased accordingly.

Section 8.1(e)(i) of the LLC Agreement provides that a director may be removed as a director at any time and for any reason by the Board, pursuant to the written request of the person(s) or entit(ies) entitled to designate such director as discussed above. A director may also be removed for cause (as defined in the LLC Agreement) by Majority Vote of the Board; *provided* that (i) representatives of the Member entitled to designate such director shall be given the opportunity to speak to the Board regarding such proposed removal prior to the Board voting on the removal of such director and (ii) the affected director shall not be authorized to participate in any such decision by the Board. In the event that a director designated by a Founding Firm fails to attend a majority of Board meetings during any 12-month period, the Board may require that Founding Firm to designate a replacement director.

In addition, Section 8.1(e)(ii) of the LLC Agreement provides that the Board may, by Supermajority Vote (excluding the vote of the directors designated by the Member subject to sanction), suspend or terminate a director's service as such to the Company in the event: (A) the director has materially violated any Regulatory Matters Provision or any applicable law or (B) such action is necessary or appropriate in the public interest or for the protection of investors. Prior to any such suspension or termination, (x) the Board shall deliver to the Founding Firm that appointed the director a written notice specifying in reasonable detail the basis for the proposed suspension or termination and (y) representatives of the Founding Firm shall be given an opportunity to address the Board regarding such proposed suspension or termination prior to the Board voting thereon. In the event of such suspension or termination, the individual designated by the Founding Firm shall immediately cease to be a director and

the resulting vacancy shall be filled pursuant to Section 8.1(f) of the LLC Agreement (as discussed below).

Section 8.1(e)(iii) of the LLC Agreement provides that any director who becomes subject to any applicable "statutory disqualification" (within the meaning of Section 3(a)(39) of the Act) shall be deemed to have automatically resigned from the Board.

Pursuant to Section 8.1(f) of the LLC Agreement, in the event that any director designated pursuant to the terms of the LLC Agreement for any reason ceases to serve as a director during his or her term of office, the resulting vacancy shall be filled by a representative designated by the person or persons entitled to designate such director.

Pursuant to Section 8.1(g) of the LLC Agreement, each Founding Firm will be permitted to appoint an alternate director, who will have the right to serve, act and vote as the director designated by that Founding Firm in the absence of the principal director from time to time in cases of necessity. The alternate will be permitted to attend all meetings of the Board even if the principal director is present at such meetings (it being understood that in such case the alternate will attend as an observer and shall not have the right to act or vote as a director at any such meeting). In the event a director is removed pursuant to Section 8.1(e)(ii) of the LLC Agreement as described above, the then-appointed alternate to such director shall immediately cease to be an alternate and shall, instead, become a director (unless the related Founding Firm appoints another person as its director, in which case the alternate shall remain an alternate). In the event a director is removed pursuant to Section 8.1(d)(ii) of the LLC Agreement as described above, any alternate to such director will immediately cease to be an alternate and will not become a director. To the extent a Founding Firm lacks representation on the Board, that Founding Firm shall have the right to appoint a non-voting observer to the Board.

Section 8.1(h) of the LLC Agreement outlines the basic qualifications of directors and alternate directors. Each individual designated to the Board as a director or as an alternate, prior to serving on the Board, must certify in writing to the Company that he or she is not subject to a "statutory disqualification" within the meaning of Section 3(a)(39) of the Act. Each Founding Firm, prior to designating an individual to the Board (as a director, alternate or observer) must certify in writing to the Company that such individual is not then a director (or an alternate director or observer to the board or any committee of the board), officer or employee of a "Specified Entity," which is defined, as of any date, as (i) any U.S. securities option exchange (or facility thereof) or U.S. alternative trading system on which securities option contracts are executed (other than NYSE Amex or any of its affiliates) that lists for trading any option contract that competes with a contract listed for trading on the Options Exchange or a contract that is contemplated by the then-current business plan of the Company to be listed for trading by the Options Exchange within ninety (90) days of such date, (ii) any person or entity that owns or controls a U.S. securities option exchange or U.S. alternative trading system described in clause (i), and (iii) any affiliate of a person or entity described in clause (i) or (ii) above; *provided* that, in the event of a change in applicable law permitting the execution of transactions in exchange-listed securities options otherwise than on a national securities exchange or facility thereof (including, but not limited to, internalization of orders for exchange-listed securities options or the execution of such orders on an alternative trading system), (x) a system operated by or on behalf of a Founding Firm or its affiliates for purposes of the internalization or crossing of: (i) orders of customers of such Founding Firm or its affiliates, (ii) orders of such Founding Firm or its affiliates or (iii) orders routed from a retail broker-dealer or retail brokerage unit, shall not be considered a Specified Entity and (y) in addition to the matters covered in clause (x), NYSE Amex and the Founding Firms will negotiate in good faith the terms of an exception from the definition of Specified Entity for any alternative trading system owned solely by an individual Founding Firm or its affiliates that performs order crossing in a manner that does not substantially compete with the Options Exchange in terms of market share and other relevant factors. In the event an individual designated by a Founding Firm or appointed as an alternate becomes a member of the board of directors or similar governing body of a Specified Entity, that individual shall immediately cease to be a director, alternate or observer, as applicable, and the resulting vacancy shall be filled pursuant to the applicable procedures described above.

As provided in Section 8.1(i) of the LLC Agreement, a quorum of the Board for purposes of conducting business consists of a combination of the directors representing greater than fifty percent (50%) of the votes of all directors who are elected and entitled to vote on such matter under the LLC Agreement, including, in the case of any matter subject to a Supermajority Vote, a combination of directors representing greater than fifty percent (50%) of the votes of all directors designated by Founding Firms. At all times when the Board is conducting business at a meeting of the Board, a quorum must be present at such meeting. If a quorum shall not be present at any meeting of the Board, then the directors present at the meeting may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present, *provided* that if, at any duly called meeting wherein a matter subject to a Supermajority Vote is being considered, a quorum is not met solely due to the fact that a requisite number of Founding Firm directors are not present, such meeting shall be rescheduled on, absent exigent circumstances, at least three (3) business days' prior written notice of such rescheduled meeting and, for purposes of such rescheduled meeting, the absence of the requisite number of Founding Firm directors shall not prevent the Board from taking action by Supermajority Vote. A director may vote or be present at a meeting either in person or by proxy.

The matters specified on Schedule 8.1(i)(v) of the LLC Agreement may only be taken (whether by the Company or any subsidiary) with approval by a Supermajority Vote of the Board; *provided* that any matter excepted from that schedule by any item on the schedule shall be deemed to be excepted from all items on the schedule except where expressly covered by another item on such schedule. Certain matters specified in Schedule 8.1(i)(v) of the LLC Agreement do not require a Supermajority Vote where NYSE Amex, acting in its capacity as an SRO, requires that such action be taken. These matters are (i) material amendments to the LLC Agreement or any other governing document of the Company or any subsidiary; (ii) approval of a capital expenditure (other than those approved in connection with the annual budget) that in the aggregate would exceed $3 million, (iii) entering into, amending in any material respect or terminating any material contract and (iv) any material change to fees charged by the Options Exchange. In the event that at any given time, (A) two or fewer Founding Firms have the right to designate a director or (B) the aggregate

number of Class B Common Interests held by all Founding Firms, excluding Non-voting Common Interests, falls below twenty percent (20%) of the then issued and outstanding Common Interests, the list of matters that may be taken only with approval by a Supermajority Vote of the Board shall include only those actions specified in items 8, 12, 15, 16, 24 and 25 on Schedule 8.1(i)(v) of the LLC Agreement,[15] *provided* that in the event that the aggregate number of Class B Common Interests held by all Founding Firms, excluding Non-voting Common Interests, falls below fifteen percent (15%) of the then issued and outstanding Common Interests, a Supermajority Vote of the Board on such actions shall only be required to the extent that any such action would have a materially and disproportionately disadvantageous effect on the economic or voting rights of the Founding Firms; *provided further* that a material change to the pricing of the NYSE Euronext Agreement, subject to the provisions therein, that is not in good faith consideration of (i) documented additional or enhanced services (subject to such additional or enhanced services being provided at cost) or (ii) a documented increase in the aggregate cost of the services provided thereunder (net of any reductions in other costs of services provided thereunder) will *per se* be deemed to have a materially and disproportionately disadvantageous effect on the economic rights of Founding Firms.

Pursuant to Section 8.3 of the LLC Agreement, the Board will establish on the effective date of the LLC Agreement the Advisory Committee comprised of natural persons having the capacity to provide advice to the Board, which advice the Board will consider in good faith but shall not be bound by, with respect to subjects identified by the Board from time to time, including new products and market structure.

The authorized number of Advisory Committee members is initially nine (9), but may be increased or decreased by Majority Vote of the Board; *provided,* that at all times each Founding Firm shall be entitled to have one (1) representative on the Advisory Committee (except as otherwise provided in the LLC Agreement). The Advisory Committee members shall be appointed by the Members as follows: two (2) Advisory Committee members appointed by NYSE Amex and one (1) Advisory Committee member appointed by each Founding Firm. Advisory Committee members shall hold office until their respective successors are appointed or until their earlier death, resignation or removal.

Any Advisory Committee member may resign at any time and may be removed at any time and for any reason by the Board, at the request of the Member entitled to appoint such Advisory Committee member. In the event that any Advisory Committee member for any reason ceases to serve as an Advisory Committee member during his or her term of office, the resulting vacancy shall be filled by the Member entitled to appoint such Advisory Committee member.

Each individual designated to the Advisory Committee, prior to serving on the Advisory Committee, shall certify in writing to the Company that he or she is not subject to a "statutory disqualification" within the meaning of Section 3(a)(39) of the Act. Each Founding Firm, prior to designating an individual to the Advisory Committee shall certify in writing to the Company that such individual is not then a director (or an alternate director or observer to the board or any committee of the board), officer or employee of a Specified Entity. In the event an individual designated to the Advisory Committee becomes a member of the board of directors or similar governing body of a Specified Entity, such individual shall immediately cease to be an Advisory Committee member and the resulting vacancy shall be filled as described above.

Transfers of Interests

Article XI of the LLC Agreement and Article III of the Members Agreement contain numerous requirements and restrictions relating to transfers of Interests by a Member. Section 11.1 of the LLC Agreement provides that the admission of any substitute Member will not become effective until (i) the Board gives its written consent, which shall be deemed given with respect to transfers made in accordance with Section 4.9 of the LLC Agreement relating to ownership limitations and Sections 11.3 and/or 11.4 of the LLC Agreement (whose provisions are discussed below) and/or Sections 3.2, 3.3 and/or 3.4 of the Members Agreement (whose provisions are discussed below) and (ii) such substitute Member and the withdrawing Member and/or the transferor Member, as the case may be, shall have executed, acknowledged and delivered such instruments as are required by the Board. Pursuant to Section 11.1 of the LLC Agreement, the additional or substitute Member shall thereafter have all of the rights and obligations of a Member and may, in the sole discretion of the Board, be deemed a Founding Firm and granted all of the rights and obligations of a Founding Firm. Further, unless approved by the Board, no transfer of Common Interests shall be permitted, nor shall any transferee become a beneficial owner of Common Interests pursuant to a transfer, if that transfer (i) could cause the Company to be treated as a publicly traded partnership within the meaning of Section 7704 of the Internal Revenue Code of 1986, as amended (the "Code"); or (ii) would result in the sale or exchange of fifty percent (50%) or more of the total Interests in the Company's capital and profits in one or more transactions in the aggregate within a 12-month period. No transfer of shares to any person or entity that is a Sanctioned Person will be permitted. A "Sanctioned Person" is a person or entity that the United States, the United Nations, Switzerland or the European Union (or any of its member states) has subjected to economic sanctions such as (i) blocking of assets, (ii) prohibiting any transactions with or involving such person or entity or (iii) any other regulatory action that restricts the ability of another person or entity lawfully to engage in business with,

[15] The six specified items are (1) material amendments to or termination of any of the NYSE Euronext Agreement; (2) material amendments to the LLC Agreement or any other governing document of the Company or any subsidiary (including to increase/decrease the number or makeup of the directors) other than any amendment directed by NYSE Amex in its capacity as an SRO in accordance with Section 16.1(a) of the LLC Agreement; (3) approval of any material related party transactions except (i) any transaction or arrangement that has been approved pursuant to a different item on Schedule 8.1(i)(v) of the LLC Agreement or explicitly excluded from approval by any item on that schedule, (ii) participation in any cash pooling program of NYSE Euronext and any of its affiliates, or (iii) any transaction or arrangement that requires the Company or any subsidiary to receive services under the NYSE Euronext Agreement; (4) approval of any dividend policy and any declaration, allocation or distributions of profits or capital other than a tax distribution and other than pursuant to the terms of the LLC Agreement or a Board adopted (by Supermajority Vote) dividend policy (and for the avoidance of doubt, other than the payment of the annual coupon on the Preferred Interest); (5) any action that would be likely to result in material change in the legal or tax structure of the Company or any subsidiary or entering into any new business that would subject the Options Exchange to a regulatory regime that previously it was not subject to and that would impose on Members, in their capacity as members, material additional regulatory obligations; and (6) any material change to fees charged by the Options Exchange other than any amendment directed by NYSE Amex in its capacity as an SRO in accordance with Section 16.1(a) of the LLC Agreement, to fund the operations and/or the regulation of the Options Exchange. An action directed by NYSE Amex in accordance with Section 16.1(a) of the LLC Agreement includes any action NYSE Amex deems necessary or appropriate to fulfill its obligations as an SRO and is not limited to those actions required by applicable law.

make payments or distributions to, or receive payments or contributions from, such person or entity.

Section 11.2 of the LLC Agreement and Section 3.1 of the Members Agreement provide that no Member, or any assignee or successor in interest of any Member, will be permitted to sell, assign or otherwise transfer any Common Interests to any third party except, (i) in the case of a transfer of Class A Common Interests or Class B Common Interests, as applicable, pursuant to Section 4.9 of the LLC Agreement relating to ownership limitations or Sections 11.3, 11.4 or 11.6 of the LLC Agreement (whose provisions are discussed below) or Sections 3.3 or 3.4 of the Members Agreement (whose provisions are discussed below) or (ii) in the case of a transfer of Class B Common Interests, subject to Section 3.2 of the Members Agreement (whose provisions are discussed below), with the prior written consent of directors representing a Majority Vote of the Board without regard to the directors appointed by the Member or Members seeking such consent (which consent (a) may be withheld with or without cause in the Board's sole discretion in the case of a transferee that is not a Qualified Transferee [16] and (b) may not be unreasonably withheld, conditioned or delayed in the case of a transferee that is a Qualified Transferee); *provided,* in each case, that no such transfer may be made to any person or entity whose affiliation with the Company would, as reasonably determined by NYSE Amex, cause reputational damage to NYSE Amex or any of its affiliates. In addition, also subject to Section 11.3 of the LLC Agreement, no transfers of Class B Common Interests shall be permitted to a Specified Entity; *provided,* subject to the provisions of Section 11.4(c) of the LLC Agreement relating to such transfers, Class B Common Interests may be transferred to a Specified Entity if such transfer is a Permitted Transfer. No equity securities of the Company may be pledged except on terms and conditions satisfactory to the Board.

Following any transfer of Class A Common Interests or Class B Common Interests (including redemptions of the latter by the Company), the Aggregate Class A Allocation, the Aggregate Class B Allocation and each Member's percentage ownership of the Common Interests will be adjusted as provided in Section 11.2(b) of the LLC Agreement. Upon any transfer of Class A Common Interests to the Founding Firms or Class B Common Interests to NYSE Amex or its affiliates, as applicable, such Class A Common Interests or Class B Common Interests, as applicable, shall cease to be Class A Common Interests or Class B Common Interests, as applicable, and shall instead become Class B Common Interests or Class A Common Interests, respectively. Unless waived at the discretion of the Board, an opinion of counsel will be required in connection with the transfer of Interests by a Member stating that the transfer would not violate any Federal securities laws or any State or provincial securities or "blue sky" laws (including any investor suitability standards) applicable to the Company or the Interest to be transferred, or cause the Company to be required to register as an investment company under the Investment Company Act of 1940, as amended, or cause the Company to become a publicly traded partnership under Section 7704 of the Code.

Section 11.3 of the LLC Agreement provides for "drag-along rights" with respect to Common Interests being sold under certain circumstances. Specifically, if (i) a Member (the "Selling Member"), acting alone or together with any other Members, intends to make a transfer of seventy-five percent (75%) or more of the then-outstanding Common Interests (other than by a public offering or a transfer to a Permitted Transferee), and (ii) the Board, by Supermajority Vote, approves a sale of the Company to a person or entity that is not an affiliate of the Company (any such transfer of Common Interests, an "Approved Sale"), then (x) the Selling Member or the Board (as applicable) may deliver written notice to the Members notifying them of the exercise of the provisions described in Section 11.3 of the LLC Agreement, and (y) all the Members (other than the Selling Member(s)) shall be obligated to participate in such transfer on a *pro rata* basis and/or to consent to, vote in favor of and raise no objections against the sale of the Company, as applicable. Additional provisions of Section 11.3 of the LLC Agreement require each Member to take certain affirmative actions in connection with an Approved Sale, such as making certain representations and warranties and to enter into certain indemnification obligations. Further, each holder of Common Interests shall, to the extent requested by the Company, pay such holder's *pro rata* portion of the expenses incurred by the holders in connection with an Approved Sale.

Section 11.4(a) of the LLC Agreement provides that the restrictions on transfers of Interests specified in Article XI of the LLC Agreement do not apply to Permitted Transfers (other than those restrictions in Section 11.1(c)(ii) relating to the admission of substitute Members, those in Section 11.1(d) relating to transfers that could cause the Company to be treated as a publicly traded partnership or would result in the sale or exchange of 50% or more of the total Interests in the Company's capital and profits within a 12-month period, those in Section 11.2(d) relating to potential violations of Federal, State or local securities laws or transfers that could cause the Company to be required to register as an investment company, those in Section 11.8 relating to (i) notice and rule filing requirements to the SEC on any acquisition of Interests that results in a Member's ownership of Common Interests exceeding certain thresholds and (ii) requirements regarding direct and indirect ownership of the Company and the rights triggered by Section 11.5(b) relating to the Company's right to redeem any or all of a Member's Class B Common Interests). In the case of a transfer required under, or effected to enable a Member to be in compliance with, applicable law or the requirements of a governmental authority or any SRO, any Founding Firm that is so required to make any such transfer shall submit the names of any potential transferees to the Board along with any information reasonably requested by the Board, and the Board shall identify which, if any, of the rights and obligations of a Founding Firm such potential transferees would have and any reasonable and conforming amendments to the LLC Agreement that would be appropriate as a result thereof and, in the event one of such transferees actually becomes a transferee pursuant to such transfer, then that transferee

[16] A "Qualified Transferee" is defined as (i) with respect to a transfer of Class B Common Interests pursuant to Section 3.2 of the Members Agreement, any person or entity that meets all of the following criteria: (a) such person or entity is not a Specified Entity, (b) the affiliation of such person or entity with the Company would not, as reasonably determined by NYSE Amex, cause reputational damage to NYSE Amex or any of its affiliates, and (c)(I) such person or entity can reasonably be expected to provide either (A) material liquidity to the Options Exchange or (B) other material commercial or strategic support to the Company or (II) NYSE Amex provides its prior written waiver to satisfaction of the conditions specified in clause (c)(I) of this definition, which waiver shall not be unreasonably withheld, conditioned or delayed or (ii) with respect to a transfer of Class A Common Interests pursuant to Section 3.3(a)(ii) of the Members Agreement, any person or entity that meets all of the following criteria: (a) the affiliation of such person or entity with the Company would not, as reasonably determined by NYSE Amex, cause reputational damage to the Members or the Company, and (b) such person or entity can reasonably be expected to provide either (A) material liquidity to the Options Exchange or (B) other material commercial or strategic support to the Company.

shall have the rights and obligations of a Founding Firm so determined by the Board, *provided* that (x) the Board shall not unreasonably withhold, condition or delay its consent to granting such Required Transferee the rights of a Founding Firm, and (y) the transferring Founding Firm shall not have an obligation to be responsible for the performance of such Required Transferee under the LLC Agreement.

Pursuant to Section 11.4(c) of the LLC Agreement, in the event of a Permitted Transfer to a Specified Entity by a Founding Firm, the Board may: (i) Require any individual, alternate or observer appointed by or representing such Founding Firm to the Board or individual appointed by such Founding Firm to the Advisory Committee to resign; (ii) disqualify such Specified Entity from voting for individuals to serve on the Board or the Advisory Committee (permanently or for such shorter period as the Board may designate), and (iii) redeem such Specified Entity's Interests pursuant to Section 11.5(b)(iii) of the LLC Agreement.

Section 3.2(a) of the Members Agreement provides that, each year, Founding Firms will be able to transfer, outside of a Public Offering, a certain amount of Class B Common Interests during a the 3-week period commencing on the day that NYSE Euronext files its Form 10–K with the SEC (such period, the "Sale Period"). This provision does not restrict Permitted Transfers.

Pursuant to Section 3.2(b) of the Members Agreement, NYSE Amex will deliver to the Founding Firms relevant financial information for purposes of determining the *pro rata* portion of fair market value (over the twelve-calendar-month period ended at the end of the immediately preceding month) represented by such Class B Common Interests the Founding Firms seek to transfer. Any Founding Firm that wishes to transfer any of its transferrable Class B Common Interests will disclose, by written notice to NYSE Amex and the other Founding Firms, the amount of Common Interests it intends to transfer. NYSE Amex may, by written notice to the transferring Founding Firm, elect to offer to purchase such Common Interests at a price equal to or greater than the *pro rata* portion of fair market value (over the twelve-calendar-month period ended at the end of the immediately preceding month) represented by such Class B Common Interests. NYSE Amex may, in lieu of consummating the transfer contemplated hereunder, cause the Company to redeem any or all of such Common Interests at the same price and on the same terms and conditions as were negotiated by NYSE Amex and the transferring Founding Firm. Any redemption by the Company pursuant to this provision shall be funded exclusively by the Redemption Reserve (as defined below) until the Redemption Reserve is exhausted, and thereafter no redemption pursuant to this provision may be made by the Company.

Pursuant to Section 3.2(c) of the Members Agreement, in the event that the transferring Founding Firm elects to reject NYSE Amex's offer, NYSE Amex elects not to make an offer, or the transfer has not occurred within the specified time period, the transferring Founding Firm may:

(i) Transfer such Common Interests to a third party; *provided* that no transferee under this provision, shall acquire the Founding Firm Right (as defined below) unless, in such transfer, such transferee acquires all of the Class B Common Interests of the transferring Founding Firm;

or

(ii) Require that NYSE Amex acquire such Common Interests at a price equal to the *pro rata* portion of fair market value (over the twelve-calendar-month period ended at the end of the immediately preceding month) represented by such Class B Common Interests (this right to require NYSE Amex to acquire the Common Interests, the "Founding Firm Right"). NYSE Amex may cause the Company to redeem any or all of such Common Interests at the same price and on the same terms and conditions (as applicable) as were negotiated by NYSE Amex and the transferring Founding Firm. Any such redemption by the Company pursuant to this provision shall be funded exclusively by the Redemption Reserve (as defined below) until the Redemption Reserve shall be exhausted, and no other funds of the Company may be used to fund any redemption by the Company pursuant to this provision. Subject to Section 4.9 of the LLC Agreement, which governs ownership limitations, NYSE Amex may assign to one of its affiliates the obligation to purchase Common Interests pursuant to the Founding Firm Right. Upon the acquisition of any Class B Common Interests by an affiliate pursuant to such an assignment, such Class B Common Interests will instead become Class A Common Interests in accordance with Section 11.2 of the LLC Agreement.

Pursuant to Section 3.2(d) of Members Agreement, if (x) a transferring Founding Firm desires to exercise a Founding Firm Right and (y) prior to notifying NYSE Amex of its Founding Firm Right, NYSE Amex has notified in writing such transferring Founding Firm that it has identified one or more bona fide third party purchasers to which such Common Interests could be transferred pursuant to Section 3.1 of the Members Agreement and that are interested in purchasing all of such transferring Founding Firm's Common Interests (such sale, an "Alternative Sale"), then such transferring Founding Firm shall engage in good faith discussions and negotiations with respect to the sale of the Common Interests; *provided* that (A) the transferring Founding Firm shall not be obligated to transfer its Common Interests at a price less than the fair market value of such Common Interests (nor will it insist on a higher price than such fair market value) and (B) such transfer shall be on terms no less favorable to the transferring Founding Firm than the terms agreed to between NYSE Amex and such transferring Founding Firm.

Section 3.2(e) of the Members Agreement provides that the transferring Founding Firm must notify the Company of its intent to either pursue the Alternate Sale or exercise the Founding Firm Right, *provided* that if such transferring Founding Firm determines to pursue an Alternate Sale, such transferring Founding Firm shall forfeit the right to exercise the Founding Firm Right with respect to the applicable Sale Period.

Section 3.2(f) of the Members Agreement provides that NYSE Amex may elect to acquire any of the Class B Common Interests to be purchased by it pursuant to Section 3.2 of the Members Agreement by installment payments: one-third of the purchase price payable upon tender and the remainder in equal payments made on each of the two succeeding calendar year anniversaries of such date of tender, with the unpaid portion of the purchase price bearing interest at a specified rate, reset daily and payable on each payment date. Notwithstanding any installment payment, NYSE Amex shall become the owner of the entirety of such Class B Common Interests and the transferring Founding Firm shall cease to be a Member of the Company with respect to such Class B Common Interests upon tender and payment by NYSE Amex of the first installment payment. In the event that NYSE Amex causes the Company to redeem such Class B Common Interests pursuant to Sections 3.2(b)(iii) or 3.2(c)(ii) of the Members Agreement, the Company shall not be entitled to acquire such Class B

Common Interests by installment payments.

Section 3.2(h) of the Members Agreement provides that, in the event that the financial information regarding the Company delivered pursuant to Section 3.2(b) of the Members Agreement is not provided at least five (5) business days prior to end of the Sale Period, NYSE Amex shall have the right to rescind its offer to purchase the Common Interests or the transferring Founding Firm shall have the right to rescind its election to exercise its Founding Firm Right, if the initial determination of the *pro rata* portion of fair market value (over the twelve-calendar-month period ended at the end of the immediately preceding month) represented by the Class B Common Interests the Founding Firms seek to transfer differs by more than an agreed percent from the final determination.

A redemption of Class B Common Interests by the Company under Sections 3.2(b)(iii) or 3.2(c)(ii) of the Members Agreement is required to be funded by the Redemption Reserve (originally funded by NYSE Amex). Pursuant to Section 3.2(i) of the Members Agreement, NYSE Amex has the right to determine the size of the increase in the Aggregate Class A Allocation (and corresponding decrease in the Aggregate Class B Allocation) and, thereby, (x) cause the Company to treat such a redemption as if it were a purchase of Class B Common Interests by NYSE Amex, by directing an increase in the Aggregate Class A Allocation (and a corresponding decrease in the Aggregate Class B Allocation) equal to the entire percentage represented by the Class B Common Interests so redeemed; (y) cause the Company to treat such a redemption as an ordinary redemption, by directing only a pro rata increase in the Aggregate Class A Allocation (and a corresponding decrease in the Aggregate Class B Allocation) proportional to the aggregate Class A and Class B allocations; or (z) cause the Company to treat such a redemption as a hybrid purchase and redemption, by directing a disproportional increase in the Aggregate Class A Allocation (and a corresponding decrease in the Aggregate Class B Allocation) that is less than the entire percentage represented by the redeemed Class B Common Interests.[17]

If NYSE Amex elects to receive an upward adjustment of the Aggregate Class A Allocation Percentage described above, the Priority Claim of NYSE Amex will be reduced by the amount paid by the Company that is attributable to the excess of such allocation over the allocation NYSE Amex would have received on a pro rata basis.

The Company is required to update and distribute to each Member a revised Members' Schedule reflecting the adjustments made pursuant to Section 3.2(i) of the Members Agreement. Any Member that would exceed the 19.9% Maximum Percentage as a result of these adjustments will be subject to the provisions of Section 4.9(c) of the LLC Agreement.

Section 3.2(j) of the Member's Agreement provides that, in the event that the effective date of the LLC Agreement occurs on or after March 11, 2011 and before June 30, 2011, then, solely with respect to the Sale Period occurring in 2011, (i) the phrase "during any Sale Period" in Section 3.2(a) of the Members Agreement shall be deemed to be a reference to "during the 10 day period following the later of (x) effective date of the LLC Agreement and (y) the day on which NYSE Euronext files its Form 10–K with the SEC," (ii) NYSE Amex and the Company shall deliver on the effective date of the LLC Agreement the financial information specified in Section 3.2(b)(i) of the Members Agreement and required to be delivered by NYSE Amex and the Company, respectively, prior to or concurrent with the start of the Sale Period, (iii) any disputes referred to in Section 3.2(b)(i) of the Members Agreement shall be resolved as promptly as practicable following the effective date of the LLC Agreement, and (iv) the reference to "end of the Sale Period" in Section 3.2(h) of the Members Agreement shall be deemed to be a reference to the end of the period referred to in clause (i) of this paragraph.

Section 3.3 of the Members Agreement provides for a limited "right of first offer" exercisable by each Founding Firm with respect to any Common Interests NYSE Amex proposes to transfer. Pursuant to Section 4.9 of the LLC Agreement, no Founding Firm will be permitted to so acquire Common Interests if such acquisition would result in the Founding Firm holding Excess Interests.

Pursuant to Section 3.3(a) of the Members Agreement, in the event that NYSE Amex intends to transfer any Class A Common Interests (other than by a Public Offering or a transfer to a Permitted Transferee), NYSE Amex shall deliver a written notice to the Founding Firms disclosing the amount of Class A Common Interests proposed to be transferred and the identity of the prospective transferee, which transferee shall be an NYSE Amex Qualified Transferee.

Pursuant to Section 3.3(b) of the Members Agreement, each Founding Firm may elect to offer to purchase (each such Founding Firm, an "Offering Founding Firm"), by written notice to NYSE Amex, its *pro rata* portion of the Class A Common Interests proposed to be so transferred. If the Founding Firms have not elected to fully purchase all of the Interests proposed to be transferred, NYSE Amex shall provide written notice to all Offering Founding Firms specifying the number of remaining Class A Common Interests, and each Offering Founding Firm may elect to purchase such remaining Class A Common Interests by written notice to NYSE Amex; *provided* that if the Offering Founding Firms collectively elect to purchase more than the remaining number of Class A Common Interests, each Offering Founding Firm shall be entitled to purchase its *pro rata* portion thereof (with such *pro rata* portion determined solely by reference to the Offering Founding Firms' respective percentage of Common Interests). The Founding Firms' right to purchase Class A Common Interests pursuant to this provision shall be contingent on the purchase by one or more Founding Firms of all of the Class A Common Interests proposed to be transferred by NYSE Amex. The Offering Founding Firms shall collectively determine the proposed price and such other terms and conditions of the proposed transfer. If NYSE Amex rejects the offer(s) of the Founding Firm(s), NYSE Amex may transfer such Class A Common Interests to the prospective transferee identified

[17] Consider, by way of example, an Aggregate Class A Allocation of 60% and an Aggregate Class B Allocation of 40% prior to a redemption of Class B Common Interests corresponding to 10% of the aggregate number of Common Interests. If NYSE Amex elected to treat such a redemption as though it were a purchase of these Class B Common Interests by NYSE Amex, it could direct an increase in the Class A Allocation equal to the entire 10% represented by the redeemed Class B Common Interests. The result would be an Aggregate Class A Allocation of 70% and an Aggregate Class B Allocation of 30%.

Alternatively, if NYSE Amex elected to treat such a redemption as an ordinary redemption, the 10% represented by the redeemed Class B Shares would effectively cease to exist and the Aggregate Class A Allocation would increase to (60/90)% or 66.6% (and the Aggregate Class B Allocation would decrease to (30/90)% or 33.3%). NYSE Amex could cause this result by directing a pro rata increase to the Aggregate Class A Allocation (and corresponding decrease in the Aggregate Class B Allocation), proportional to the aggregate Class A and Class B allocations.

Finally, if NYSE Amex elected a hybrid treatment, it could direct that the Aggregate Class A Allocation be increased to a value between 66.6% and 70% (and that the Aggregate Class B Allocation be correspondingly decreased). As further described below, such a direction would reduce the Priority Claim by the amount paid in respect of the allocation in excess of 66.6%.

by NYSE Amex in its notice at a price greater than the price offered by the Offering Founding Firms and on other terms and conditions no more favorable to the transferee(s) thereof than the terms offered by the Founding Firms. In the event that the Founding Firms elect not to make an offer, NYSE Amex may transfer such Class A Common Interests to the prospective transferee identified by NYSE Amex at a price and on other terms and conditions as determined by NYSE Amex.

Pursuant to Section 3.3(c) of the Members Agreement, prior to, and subject to the completion by NYSE Amex of a transfer of Class A Common Interests that would result in NYSE Amex and its affiliates, in the aggregate, ceasing to own at least an agreed percent of the Aggregate Class A Allocation (such transfer a "Complete Transfer") (other than pursuant to Section 3.3(d) of the Members Agreement described below), the Members and NYSE Euronext shall, acting reasonably and in good faith, consider and implement any applicable and necessary amendments to the Members Agreement and the LLC Agreement. Until such time as NYSE Amex has completed a Complete Transfer, NYSE Euronext shall provide to or procure services for the Company materially similar to those provided by NYSE Group pursuant to the NYSE Euronext Agreement and on the pricing terms and other terms provided in the NYSE Euronext Agreement. Upon a Complete Transfer, at NYSE Euronext's discretion, the NYSE Euronext Agreement may be terminated or assigned and the NYSE Amex Qualified Transferee shall agree to provide to or procure services for the Company or NYSE Euronext shall agree to continue to provide such services pursuant to such terms. NYSE Amex shall reasonably compensate the Company to the extent the NYSE Amex Qualified Transferee agrees to provide or procure services on pricing terms less favorable to the Company or on other terms which are materially more disadvantageous to the Company than those provided for by the NYSE Euronext Agreement. NYSE Amex shall continue to provide services or compensate the Company as described above for a period of time equal to the lesser of (x) four years from the time of such transfer and (y) the minimum time necessary, at the time of such transfer, for all Founding Firms to transfer their Class B Common Interests in accordance with the limitations of Section 3.2(a) of the Members Agreement, assuming such Founding Firms transfer the maximum amount of Class B Common Interests permitted thereunder as quickly as permitted thereunder. Following such period, to the extent not previously terminated or assigned, the NYSE Euronext Agreement shall terminate.

Section 3.3(d) of the Members Agreement provides that, in the event of a Complete Transfer by NYSE Amex to one of its affiliates, such transferee shall be deemed to be NYSE Amex for all purposes under the Members Agreement and the LLC Agreement and be subject to the same rights and obligations as NYSE Amex thereunder, except in respect to NYSE Amex's rights and obligations as the SRO of the Options Exchange, which rights and obligations shall remain with NYSE Amex irrespective of any such Complete Transfer.

Section 3.4 of the Members Agreement provides for a "call option" exercisable by NYSE Amex. Specifically, the Members grant NYSE Amex, the right and the option to require the Members (other than NYSE Amex) (and a transferee of a Member or a transferee of a transferee) collectively to transfer to NYSE Amex any or all of the aggregate Class B Common Interests held by all Members (other than NYSE Amex) (and such transferees) at a price equal to the *pro rata* portion of the fair market value (over the twelve-calendar-month period ended at the end of the immediately preceding month) represented by such Class B Common Interests (such right, the "Call Option"). NYSE Amex shall have the right, but not the obligation, to exercise the Call Option, in whole or in part, in its sole discretion at any time on or after the tenth anniversary of the effective date of the LLC Agreement. Each Member (other than NYSE Amex) (and each such transferee, if any) shall tender to NYSE Amex such person's *pro rata* portion of the Class B Common Interests NYSE Amex desires to purchase and NYSE Amex shall pay to each such Member (other than NYSE Amex) (and transferee) the purchase price. Subject to Section 4.9 of the LLC Agreement, which governs ownership limitations, NYSE Amex may assign to one of its affiliates the right to purchase Class B Common Interests pursuant to the Call Option. Upon the acquisition of any Class B Common Interests by an affiliate pursuant to such an assignment, such Class B Common Interests will instead become Class A Common Interests in accordance with Section 11.2 of the LLC Agreement.

Redemption of Interests

Section 11.5(a) of the LLC Agreement provides that the Company may, by Majority Vote of the Board, redeem any or all of the Preferred Interests at any time; *provided* that only such funds as are available in the Redemption Reserve may be used to fund any such redemption. The "Redemption Reserve" is an independent cash reserve established by the Board as of the effective date of the LLC Agreement and which will be designated for the sole purpose of funding any redemptions of (i) Preferred Interests (at any time, by Majority Vote of the Board) or (ii) Class B Common Interests, and shall not be used for any other purpose. The amount of the Redemption Reserve will be agreed upon by the Members and will be increased to the extent of any amount accrued and unpaid on the unpaid Priority Claim.

With respect to the Class B Common Interests, Section 11.5(b) of the LLC Agreement provides that the Company shall have the right, by Majority Vote of the Board, to redeem any or all of a Member's Class B Common Interests, at a redemption price equal to the lower of (x) the balance of that Member's capital account (subject to certain adjustments) with respect to the Class B Common Interests so redeemed and (y) the *pro rata* portion of fair market value (over the twelve-calendar-month period ended at the end of the immediately preceding month) represented by such Class B Common Interests:

(i) If that Member fails to make a Regulatory Capital Contribution on or before the payment date identified in the relevant written notice and fails to timely cure such non-payment;

(ii) If that Member directly or indirectly acquires a controlling interest in or becomes the direct or indirect beneficial owner of a controlling interest in, grants a controlling interest to or becomes directly or indirectly beneficially owned by, or comes under common control with, a Specified Entity (for purposes hereof, "controlling interest" means greater than fifty percent (50%) of the voting equity of the applicable entity) and, in the event such Member becomes directly or indirectly beneficially owned by or comes under common control with a Specified Entity, has not cured such event within a specified time period;

(iii) If such Member makes a Permitted Transfer to a Specified Entity; or

(iv) Pursuant to Section 2.1(i) of the Members Agreement (as described below).

In connection with the Plan, Section 2.1(i) of the Members Agreement provides that the Company also has the right, by Majority Vote of the Board, to redeem on the same terms as above any

or all of the Class B Common Interests of a Founding Firm that, as of a quarterly determination date, (i) has failed to satisfy a minimum volume threshold during the preceding 12-month period or (ii) has (A) failed to satisfy a minimum volume threshold during the preceding three-month period and (B) entered into an agreement or economic arrangement with (i) a Specified Entity or (ii) an affiliate of NYSE Amex that is a U.S. securities option exchange (or facility thereof) or U.S. alternative trading system on which securities option contracts are executed (an "Affiliate Exchange") under which such Founding Firm receives equity (whether provided through a primary issuance or a secondary sale) or equity-like consideration in exchange for market making or the provision of liquidity, order flow or volume (except under any volume-based fee discount or rebate program or any program or arrangement open to market participants generally) in any contract that competes with a contract that is then listed for trading by the Options Exchange or that is contemplated by the then current business plan of the Company to be listed for trading by the Options Exchange within ninety (90) days following the date on which such Founding Firm has entered into the agreement with the Specified Entity or an Affiliate Exchange, subject to certain exceptions.

The Redemption Reserve shall not be used to fund any purchase of Class B Common Interests pursuant to Section 11.5(b) of the LLC Agreement or Section 2.1(i) of the Members Agreement.

Section 11.5(c) of the LLC Agreement provides that in the event a Founding Firm (A) determines that (x) a Member has become a Sanctioned Person and (y) regulatory or other requirements necessitate such Member's withdrawal as a Member if such Founding Firm were to remain a Member and (B) provides notice of such determination to the Company, the Company may redeem all Common Interests owned by the Sanctioned Person by Supermajority Vote of the Board (excluding the vote of the affected Member), at a redemption price equal to the lower of (I) the balance of the Member's capital account (subject to certain adjustments) and (II) the fair market value of the Sanctioned Person's Common Interests; *provided* that if the Company fails to redeem the Sanctioned Member's Common Interests, such Founding Firm shall have the right to put its Common Interests to the Company at a price equal to one dollar ($1).

Section 11.5(f) of the LLC Agreement provides that all redemptions of Class B Common Interests by the Company pursuant to Section 11.5 of the LLC Agreement shall be subject to applicable restrictions contained in the Delaware LLC Act and in the Company's debt financing agreements, and if any such restrictions prohibit the redemption of Class B Common Interests pursuant to Section 11.5 of the LLC Agreement which the Company is otherwise entitled or required to make, the time periods provided in Section 11.5(e) of the LLC Agreement will be suspended, and the Company may make such redemptions as soon as any applicable restrictions allow; *provided* that the price at which such redemption is made shall be fixed as of the date such redemption would have occurred had there not existed any restrictions on such redemption. Furthermore, nothing shall require the Company to segregate or set aside any funds or other property for the purpose of making any payment or distribution pursuant to Section 11.5 of the LLC Agreement. The right of any Member or beneficiary thereof to receive any payment or distribution under those provisions will be an unsecured claim against the general assets of the Company. Notwithstanding anything to the contrary in the LLC Agreement, if the application of the restrictions in Section 11.5(f) described in this paragraph prohibits the redemption of the Class B Common Interests of a Sanctioned Person, the Company must redeem such Class B Common Interests by providing the Sanctioned Person a promissory note, the terms of which will be determined by the Majority Vote of disinterested directors, in a principal amount equal to the lower of (I) the balance of that Member's capital account (subject to certain adjustments) and (II) the fair market value of the Sanctioned Person's Common Interests, in each case, determined as of the date the Company determines to redeem the Sanctioned Person's Common Interests, payable at such time as any applicable restrictions allow, and the Company shall become the owner of such Class B Common Interests upon tender of the promissory note.

In the event the Company elects not to exercise its option to redeem all or any portion of the Class B Common Interests under Section 11.5(b) of the LLC Agreement as discussed above, NYSE Amex shall have the right, but not the obligation, within thirty (30) days of the event triggering such right, to require the applicable Founding Firm to transfer any or all of such unredeemed Class B Common Interests to NYSE Amex at a price equal to the *pro rata* portion of fair market value (over the twelve-calendar-month period ended at the end of the immediately preceding calendar month) represented by such Class B Common Interests. NYSE Amex may assign to an affiliate the right to purchase Class B Common Interests pursuant to this paragraph.

Section 11.6 of the LLC Agreement provides the requirements for an initial public offering of the Company's securities, whether primary or secondary, pursuant to a registration statement filed under the Securities Act of 1933, as amended (the "Securities Act"). At any time upon the determination of the Board that an initial public offering is in the best interests of the Company and the Members, and upon approval by a Supermajority Vote of the Board if such initial public offering does not constitute a Qualified Public Offering (defined as giving rise to at least $175,000,000 in gross proceeds and resulting in an implied valuation for the equity securities of the Company as a whole that will be no less than $550,000,000), subject to applicable law and receipt of applicable regulatory approvals, either (a) the Company shall be required to contribute all or a specified portion of the assets of the Company to a corporation newly formed under the laws of the State of Delaware (the "New Company"), or (b) the Members shall be required to contribute their Interests to the New Company, in each case in exchange for shares of the New Company's stock having substantially the same equity interests and voting rights as the Interests being contributed (the "New Company Shares"), and the Company shall cause the New Company to file and use its best efforts to have declared effective a registration statement under the Securities Act for an initial public offering, and to cause the New Company and its officers and employees to use their best efforts to market the New Company Shares, subject to all applicable Securities Act restrictions. To the extent required by the underwriters managing a registered public offering of the New Company Shares, each Member agrees to complete and execute all customary questionnaires and similar documents so required under the terms of such underwriting agreements. Upon the consummation of an initial public offering, certain specified portions of the LLC Agreement and such other provisions as the Board may determine, including the LLC Agreement in its entirety, shall terminate automatically

and be of no further force and effect. Notwithstanding anything to the contrary in the LLC Agreement, as a condition to an initial public offering, the Company or any successor thereto shall enter into a registration rights agreement, upon commercially reasonable terms, with any Member requesting such agreement with respect to the registration of its equity securities with customary terms and conditions and in form and substance reasonably satisfactory to the Board and such Member; *provided* that such registration rights agreement shall include (i) demand registration rights that apply (A) equally to all Members, (B) only after an initial public offering, and (C) subject to customary minimum thresholds and (ii) piggyback registration rights for all Members on a *pro rata* basis in proportion with their relative common equity interests.

Certain Regulatory and Compliance Matters

As provided in Section 8.1(m) of the LLC Agreement, (A) the Board in carrying out its duties and without limitation on its other obligations under applicable law or otherwise and (B) each director, in carrying out his or her duties and without limitation on his or her other obligations under applicable law or otherwise (but subject to the waiver of fiduciary duties otherwise provided for in the LLC Agreement), shall be obligated to (x) comply with the Federal securities laws and the rules and regulations promulgated thereunder and (y) cooperate with NYSE Amex pursuant to its regulatory authority and the provisions of the LLC Agreement and with the SEC. Furthermore, each director must take into consideration whether his or her actions would cause the Options Exchange or the Company to engage in conduct that fosters and does not interfere with NYSE Amex's or the Company's ability to carry out their respective responsibilities under the Act and to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

As further provided in Section 8.1(m) of the LLC Agreement, NYSE Amex must receive notice of planned or proposed changes to the Company (but not to include changes relating solely to non-market matters) or the Options Exchange and NYSE Amex must not object affirmatively to such changes prior to implementation, not inconsistent with the LLC Agreement. NYSE Amex, in the performance of its obligations as the SRO for the Options Exchange, shall following receipt of such notice and without undue delay, notify the Company whether or not it has any objection to such a change based on the potential for such change to give rise to a Regulatory Deficiency (as defined below). In the event that NYSE Amex, in its sole discretion, determines that such planned or proposed changes to the Company or the Options Exchange could cause a Regulatory Deficiency if implemented, NYSE Amex may direct the Company to, and the Company shall, modify the planned or proposed changes as necessary to ensure that it does not cause a Regulatory Deficiency. In the event that NYSE Amex, in its sole discretion, determines that a Regulatory Deficiency exists or is planned, NYSE Amex may direct the Company to, and the Company shall, undertake such modifications to the Company (other than as to non-market matters) as are necessary or appropriate to eliminate or prevent the Regulatory Deficiency and allow NYSE Amex to perform and fulfill its regulatory responsibilities under the Act.

A "Regulatory Deficiency" is defined in the LLC Agreement as the operation of the Options Exchange or the Company (in connection with matters other than non-market matters) in a manner that is not consistent with any Regulatory Matters Provision, the rules of NYSE Amex, as amended from time to time, or the Federal securities laws and the rules and regulations promulgated thereunder, applicable to the Exchange or NYSE Amex options trading permit holders, or that otherwise impedes NYSE Amex's ability to regulate the Options Exchange or NYSE Amex options trading permit holders or to fulfill its obligations under the Act as a SRO.

Section 8.1(n) of the LLC Agreement states that NYSE Euronext has developed corporate compliance policies that govern the conduct of its employees, officers, and directors and the employees, officers, and directors of its affiliates. The Board will adopt these policies on the effective date of the LLC Agreement, but these policies shall not apply to directors, alternate directors or observers to the Board appointed by a Founding Firm except as described in Sections 8.1(n)(ii) and 8.1(n)(iii) of the LLC Agreement (as described below). These policies (except for their application to directors, alternate directors or observers to the Board appointed by a Founding Firm) may be revised from time to time by NYSE Euronext, *provided* that the personal trading policy referred to in Section 8.1(n)(ii) of the LLC Agreement, as it applies to directors, alternate directors and observers to the Board appointed by a Founding Firm, may only apply to stock and other securities issued by NYSE Euronext and its affiliates. Any such revised policies will be promptly provided to the Company. Subject to applicable law, all employees, officers, and directors (other than directors, alternate directors and observers to the Board appointed by a Founding Firm) of the Company or its affiliates will be expected to comply with these policies, except as described in Sections 8.1(n)(ii) and 8.1(n)(iii) of the LLC Agreement. Section 8.1(n)(ii) of the LLC Agreement provides that the personal trading policy of NYSE Euronext, including any modifications or revisions thereto, shall apply to directors, alternate directors, and observers to the Board appointed by the Founding Firms solely in their personal capacities and not in such a director's capacity as an employee of any Founding Firm. Section 8.1(n)(iii) of the LLC Agreement provides for a representation by NYSE Euronext that it has obtained a waiver by the audit committee of the board of directors of NYSE Euronext exempting the directors, alternate directors and observers to the Board appointed by the Founding Firms from all of its corporate compliance policies (other than its personal trading policy, as and to the extent described in Section 8.1(n)(ii)).

Section 8.1(o) of the LLC Agreement provides that NYSE Euronext or one of its affiliates has the right to conduct audits of all operations of the Company. The NYSE Euronext internal audit group will have access to all records and employees of the Company and will determine which audits to conduct and the timetable for such work. Any such audit will be considered in a manner consistent with the NYSE Euronext audit group charter, which mandates the independent role of the group and which is approved by the NYSE Euronext Audit Committee. If the Company engages an external party to conduct an audit, the NYSE Euronext audit group will have the right to review with the external party the nature and extent of the work and any resulting report and supporting written work product. NYSE Euronext will bear all of the costs and expenses incurred by the Company and its representatives related

to the exercise of its rights pursuant to this paragraph.

Pursuant to Section 11.8(a) of the LLC Agreement, beginning after SEC approval of the LLC Agreement, the Company shall provide the SEC with written notice ten (10) days prior to the closing date of any acquisition of an Interest by a person or entity that results in a Member's ownership of Common Interests, alone or together with any affiliate, meeting or crossing the threshold level of five percent (5%) or the successive five percent (5%) ownership levels of ten percent (10%) and fifteen percent (15%) of the aggregate Common Interests.

Section 11.8(b) of the LLC Agreement establishes certain requirements regarding direct ownership of the Company. Beginning after SEC approval of the LLC Agreement, no person or entity that is not a Member as of the effective date of the LLC Agreement, either alone or together with its affiliates, at any time, may directly own Common Interests that would result in such person or entity having ownership of Common Interests representing more than the 19.9% Maximum Percentage or any successive five percent (5%) ownership threshold (*i.e.,* 24.9%, 29.9%, etc) (the "Concentration Limitation"). The Concentration Limitation shall apply to each person or entity (other than NYSE Amex alone or together with its affiliates, as applicable) unless and until: (A) Such person or entity has delivered to the Board a notice in writing, not less than forty-five (45) days (or such shorter period as the Board shall expressly consent to) prior to the acquisition of any Common Interests that would cause such person or entity (either alone or together with its affiliates) to exceed the Concentration Limitation, of such person or entity's intention to acquire such Common Interests; (B) such notice has been filed with, and approved by, the SEC under Section 19(b) of the Act and has become effective thereunder; and (C) the Board has not determined to oppose such person or entity's acquisition of such Common Interests.

Pursuant to Section 11.8(b)(iii) of the LLC Agreement, the Board shall oppose an ownership of Common Interests by a person or entity if the Board shall have determined, in its sole discretion, that (A) such ownership of Common Interests by the person or entity, either alone or together with its affiliates, will impair the ability of the Company and the Board to carry out their functions and responsibilities, including but not limited to, under the Act, or is otherwise not in the best interests of the Company; (B) such ownership of Common Interests by the person or entity, either alone or together with its affiliates, will impair the ability of the SEC to enforce the Act; (C) the person or entity or its affiliates are subject to any applicable "statutory disqualification" (within the meaning of Section 3(a)(39) of the Act); or (D) if such Common Interests would result in the person or entity (alone or together with its affiliates) having an ownership interest of more than twenty percent (20%) of the aggregate Common Interests and the person or entity or one of its affiliates is either a "member" or "member organization" of NYSE Amex (as defined in the rules of NYSE Amex, as such rules may be in effect from time to time). In making a determination pursuant to clause (C) of the preceding paragraph, the Board may impose such conditions and restrictions on the person or entity and its affiliates owning any Common Interests as the Board may in its sole discretion deem necessary, appropriate or desirable in furtherance of the objectives of the Act and the governance of the Company.

Section 11.8(c) of the LLC Agreement establishes certain requirements regarding NYSE Amex's ownership of the Company. Beginning after SEC approval of the LLC Agreement, the aggregate percentage of Common Interests held by NYSE Amex and its affiliates, as applicable, shall not decline below fifteen percent (15%) unless and until: (A) NYSE Amex has delivered to the Board a notice in writing, not less than forty-five (45) days (or such shorter period as the Board shall expressly consent to) prior to the transfer of any Common Interests that would result in such a decline, of NYSE Amex's intention to transfer such Common Interests; and (B) such notice has been filed with, and approved by, the SEC under Section 19(b) of the Act and has become effective thereunder.

Section 11.8(d) of the LLC Agreement establishes certain requirements regarding indirect ownership of the Company. Except as described in the last sentence of this paragraph, a "Controlling Person" (defined as a person or entity that, alone or together with any affiliate, owns a Controlling Interest in a Member, where a "Controlling Interest" means the direct or indirect ownership of 25% or more of the total voting power of that Member by any person or entity, alone or together with any affiliate) will be required to execute, and the relevant Member shall take such action as is necessary to ensure that each of its Controlling Persons executes, an amendment to the LLC Agreement upon establishing a Controlling Interest in any Member that, alone or together with any affiliate, holds an ownership interest in the Company equal to or greater than 20% of the aggregate Common Interests. In such an amendment, the Controlling Person must agree (A) to become a party to the LLC Agreement and (B) to abide by all the provisions of the LLC Agreement relating to regulatory matters. Notwithstanding the foregoing, a person or entity will not be required to execute an amendment to the LLC Agreement pursuant to Section 11.8(d) of the LLC Agreement if the person or entity does not, directly or indirectly, hold any interest in a Member.

Beginning after SEC approval of the LLC Agreement, any amendment to the LLC Agreement executed pursuant to Section 11.8(d) of the LLC Agreement is subject to the rule filing process pursuant to Section 19 of the Act. The non-economic rights and privileges, including all voting rights, of the Member in which a Controlling Interest is held under the LLC Agreement and the Act will be suspended until such time as the amendment executed pursuant to Section 11.8(d) of the LLC Agreement has become effective pursuant to Section 19 of the Act or the Controlling Person no longer holds a Controlling Interest in the Member.

Section 13.2(c) of the LLC Agreement requires the books and records of the Company to be subject at all times to inspection and copying by the SEC and NYSE Amex at no additional charge to the SEC or NYSE Amex. The books, records, premises, officers, directors, agents and employees of the Company shall be deemed the books, records, premises, officers, directors, agents and employees of NYSE Amex for purposes of and subject to oversight pursuant to the Act. To the extent related to the Company's business, the books, records, premises, officers, directors, agents and employees of each Member will be deemed the books, records, premises, officers, directors, agents and employees of NYSE Amex for purposes of and subject to oversight pursuant to the Act.

Section 16.1 of the LLC Agreement provides requirements regarding regulatory approvals and compliance. Section 16.1(a) provides that so long as the Options Exchange is a facility of NYSE Amex, in the event that NYSE Amex, in its sole discretion, determines that any action, transaction or aspect of an action or transaction, is necessary or appropriate for, or interferes with, the performance or fulfillment of NYSE Amex's regulatory functions, its responsibilities under the Act or as specifically required by the SEC, NYSE Amex shall have the sole and exclusive authority to direct that any such

required, necessary or appropriate action, as it may determine in its sole discretion, be taken or transaction be undertaken by or on behalf of the Company without regard to the vote, act or failure to vote or act by any other party in any capacity.[18]

Pursuant to Section 16.1(b) of the LLC Agreement, the Company will use commercially reasonable efforts to obtain such regulatory approval(s) as may be necessary for the Company to engage in its business on such schedule as shall be reasonably determined by the Board to be in the best interests of the Company. The Founding Firms will agree to cooperate with the Company as reasonable and necessary to obtain and maintain all regulatory approvals.

Section 16.1(d) of the LLC Agreement provides that the Company, NYSE Euronext, NYSE Group, each Member, and the officers, directors, agents, and employees of the Company, NYSE Euronext, NYSE Group and each Member irrevocably submit to the jurisdiction of the U.S. Federal courts, the SEC and NYSE Amex (in its capacity as an SRO) for purposes of any suit, action or proceeding pursuant to U.S. Federal securities laws, and the rules and regulations promulgated thereunder, arising out of, or relating to, activities of the Company and agree to waive, and not to assert by way of motion, as a defense or otherwise in any such suit, action or proceeding, any claims that they are not personally subject to the jurisdiction of the SEC, that the suit, action or proceeding is an inconvenient forum or that the venue of the suit, action or proceeding is improper, or that the subject matter thereof may not be enforced in or by such courts or agency.

Section 16.1(e) of the LLC Agreement provides that the Company, NYSE Euronext, NYSE Group, each Member, and the officers, directors, agents, and employees of the Company, NYSE Euronext, NYSE Group and each Member agree to comply with the Federal securities laws and the rules and regulations promulgated thereunder and to cooperate with NYSE Amex pursuant to its regulatory authority and the provisions of the LLC Agreement and with the SEC; and to engage in conduct that fosters and does not interfere with the Company's and NYSE Amex's ability to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in, securities; to remove impediments to and perfect the mechanisms of a free and open market and a national market system; and, in general, to protect investors and the public interest.

Section 16.1(f) of the LLC Agreement provides that the Company, NYSE Euronext, NYSE Group and each Member shall take such action as is necessary to ensure that the officers, directors, agents, and employees of the Company, NYSE Euronext, NYSE Group and such Member who are involved in the activities of the Company or the Options Exchange, with respect to their activities relating to the Company or the Options Exchange, consent in writing to the application to them of Section 13.2(c) of the LLC Agreement relating to inspection of books and records for purposes of oversight pursuant to the Act; Section 16.1(d) of the LLC Agreement relating to submission to the jurisdiction of the U.S. Federal courts, the SEC and NYSE Amex (in its capacity as an SRO) and waiver of certain legal claims; Section 16.1(e) of the LLC Agreement relating to the matters described in the immediately preceding paragraph; the last sentence of Section 8.1(d)(iv) of the LLC Agreement and Section 8.1(m)(i) of the LLC Agreement relating to each director's compliance with Federal securities laws and the rules and regulations thereunder and cooperation with NYSE Amex pursuant to its regulatory authority and with the SEC; Section 8.1(m)(ii) of the LLC Agreement relating to NYSE Amex's authority and responsibility to eliminate or prevent Regulatory Deficiencies; Section 14.1(i) of the LLC Agreement relating to the prompt return of certain confidential information to the other Members who disclosed it; as applicable, with respect to their activities relating to the Company upon the dissolution or termination of the Company; and Section 14.1(j) of the LLC Agreement relating to the confidentiality of all Confidential Information (as defined below) pertaining to the self-regulatory function of NYSE Amex.

Volume-Based Equity Plan [19]

Pursuant to Section 2.1 of the Members Agreement, for an initial period of five (5) years and three (3) months, each Founding Firm will have to satisfy certain minimum volume requirements. Under the Plan, for each measurement period, the Company will issue Annual Incentive Shares. Each Founding Firm will be entitled to receive, for no additional consideration, a portion of the Annual Incentive Shares such that it dilutes, maintains or increases its equity interest in the Company (relative to the other Founding Firms) based on the degree to which the Founding Firm has failed to achieve, achieved or exceeded its "Individual Target" during the measurement period. A Founding Firm's Individual Target will be its *pro rata* portion of an aggregate Founding Firm target contribution to the annual volume of the Options Exchange. This *pro rata* calculation will be performed once, based on the Founding Firm's holdings of Class B Common Interests relative to the other Founding Firms at the time the Company is formed and will not change as a Founding Firm's equity holdings fluctuate as a result of the Plan. The Plan will not affect the equity holdings of NYSE Amex and the Plan will not increase or decrease the aggregate equity interest of the Founding Firms relative to NYSE Amex.

The Annual Incentive Shares not allocated to one or more Founding Firms by virtue of each such Founding Firm failing to achieve its respective Individual Target will be either partially or fully reallocated among those Founding Firms that exceed their respective Individual Targets.

The Company will not allocate Annual Incentive Shares to a Founding Firm if such allocation would result in the Founding Firm holding Common Interests in excess of the 19.9% Maximum Percentage or the Alternate Maximum Percentage. Rather, the Company will allocate such Annual Incentive Shares at the direction of the affected Founding Firm or, if the Founding Firm is prohibited from directing the allocation of these Annual Incentive Shares, at the direction of a Supermajority Vote of the Board.

Pursuant to Section 2.2 of the Members Agreement, Annual Incentive Shares that are not allocated (or reallocated) as described above will be included in a pool of undistributed Annual Incentive Shares. The Board will, in its discretion, determine whether and how to dispose of this pool of undistributed Annual Incentive Shares; *provided* that (i) NYSE Amex will work in good faith with Founding

[18] Nothing contained in the LLC Agreement or the Members Agreement limits the ability of NYSE Amex, in its capacity as an SRO, (i) to take any action or to direct the taking of any action that it determines is necessary or appropriate for the performance or fulfillment of its obligations as an SRO or (ii) to direct that an action that it determines interferes with the performance or fulfillment of its obligations as an SRO not be taken.

[19] It is the Exchange's view that the Plan does not constitute a proposed rule change within the meaning of Section 19(b)(1) of the Act and Rule 19b–4 thereunder.

Firms that achieve their respective Individual Targets in determining whether and how to distribute this pool and (ii) the Company will be obligated to dispose of this pool within eighteen (18) months unless otherwise agreed by a Supermajority Vote of the Board.

Confidentiality

Article XIV of the LLC Agreement contains provisions for the protection of "Confidential Information," which is defined in Section 14.1(a) of the LLC Agreement as any confidential information (i) relating to the Company or any Member, or the business, financial structure, financial position or financial results, clients or affairs of the Company or any Member or (ii) that is provided to any Member or the Company or their representatives or to which the Company or any Member or their representatives has access as a result of the LLC Agreement, activities conducted pursuant to or in connection with the LLC Agreement or activities conducted by the Company or on behalf of the Company that is either (x) marked as confidential, (y) the disclosing party informs the receiving party at or prior to the time of disclosure is confidential or (z) should be reasonably understood by the receiving party to be confidential. Certain exceptions are provided for information that is otherwise publicly available; was previously known to the receiving party; was received by the receiving party from a source lawfully having possession of such information and the right to disclose it; is released or disclosed to the public by the disclosing party; or is independently developed by the receiving party. When the Company or any Member or its representative directly or indirectly receives Confidential Information, or access to it, from another person or entity, Section 14.1(b) of the LLC Agreement requires that the receiving party will not directly or indirectly (i) disclose any of the Confidential Information to any third party except as specifically permitted by the LLC Agreement or (ii) use any of the Confidential Information for any purpose except as specifically permitted by the LLC Agreement or otherwise required to conduct the activities contemplated by the LLC Agreement.

Section 14.1(c) of the LLC Agreement requires the party receiving Confidential Information to take all reasonable precautions and actions, which must be at least the same precautions and actions as the receiving party takes to prevent the disclosure of its own comparable confidential information, to prevent the disclosure to third parties of the Confidential Information of the disclosing party, or any part of it, and to ensure that the receiving party's representatives comply with Article XIV of the LLC Agreement.

Notwithstanding the foregoing, Section 14.1(e) of the LLC Agreement provides that a receiving party or its affiliates may provide the Confidential Information to those third parties who have a legitimate "need to know" if specifically permitted by the LLC Agreement. Other exceptions to non-disclosure requirements are provided in the case of (i) information that is required to be filed with any governmental authority or SRO, (ii) information that is requested by a governmental authority or SRO having regulatory authority over the receiving party or its affiliates or (iii) a determination by the receiving party in its sole discretion that it is necessary or appropriate to provide such Confidential Information to a governmental authority or SRO. Additional exceptions are provided for information (a) required by an auditor for the purpose of an audit, (b) necessary in connection with any tax return, (c) provided to a lender, professional adviser, vendor or service provider for a bona fide business purpose (subject to customary restrictions on further disclosure or use), (d) provided to a third party to which the receiving party sells or offers to sell its Interest or any part thereof (if the third party has agreed in writing to be bound by confidentiality obligations at least as protective of the disclosing party as the provisions of Article XIV of the LLC Agreement), or (e) reasonably necessary in connection with the enforcement or defense of any rights or remedies under the LLC Agreement or arising out of the transactions contemplated thereby or the related transaction documents.

Section 14.1(i) of the LLC Agreement provides that the confidentiality obligations in Article XIV of the LLC Agreement will be effective from the effective date of said agreement and will continue to apply (A) with respect to the Company, after dissolution or termination of the Company pursuant to Article XII of the LLC Agreement for a period of three (3) years, (B) with respect to any Member, for a period of three (3) years after the date on which such Member ceases to be a Member of the Company and (C) with respect to NYSE Euronext, for a period of three (3) years after the date on which NYSE Amex ceases to be a Member of the Company. Section 14.1(i) also contains requirements, with exceptions, for the prompt return of Confidential Information to the disclosing party upon written request, or the prompt destruction (with prior written consent) of such Confidential Information by the party that received it, upon the effective date of dissolution or termination of the Company.

Pursuant to Section 14.1(j) of the LLC Agreement, all Confidential Information pertaining to the self-regulatory function of NYSE Amex (including but not limited to disciplinary matters, trading data or information about trading practices and audit information) contained in the books and records of the Company shall: (i) Not be made available to any persons or entities other than to those officers, directors, employees and agents of the Company that have a reasonable need to know the contents thereof; (ii) be retained in confidence by the Company and its officers, directors, employees and agents; and (iii) not be used for any non-regulatory purposes. This provision shall not limit a Founding Firm's ability to use its own trading data.

Section 14.1(k) of the LLC Agreement states that nothing in the LLC Agreement shall be interpreted to limit or impede the rights of the SEC or NYSE Amex to access and examine confidential information of the Company pursuant to U.S. Federal securities laws and the rules and regulations promulgated thereunder, or, subject to the notice requirements of Section 14.1 of the LLC Agreement, to limit or impede the ability of a member of the Board, Member, officer, director, agent or employee of a Member or of the Company to disclose confidential information of the Company to the SEC or NYSE Amex.

Amendment

Unless the contrary is otherwise specifically stated in the LLC Agreement, the LLC Agreement and the Members Agreement may be amended by Supermajority Vote of the Board; *provided,* that: (i) Section 8.1(d)(ii) of the LLC Agreement relating to the designation of directors by Founding Firms and Article XIV of the LLC Agreement relating to confidentiality may not be materially amended, Section 13.8 of the LLC Agreement relating to restrictions on foreign operations and Section 3.1 of the Members Agreement relating to the transfer of Interests may not be amended, without the prior written consent of each Member; (ii) any amendment that would have a disproportionate, material and adverse effect on the rights of one or more Members (other than amendments of the type described in clause (iii) below) shall require such Member's prior written consent; (iii) any amendment

that would have a material adverse effect on the rights of the Members of a class of Interests (irrespective of whether such amendment has a material adverse effect on the rights of NYSE Amex) shall require the prior written consent of Members (other than NYSE Amex) representing two thirds (⅔) of the Interests held by such Members; (iv) any amendment that would impose a new and material obligation or liability applicable by its terms to any Member or materially increase any existing material obligation or liability of any Member shall require the prior written consent of such Member and (v) any matter specified in the LLC Agreement as subject to agreement by the Members may be modified by Supermajority Vote of the Board if so agreed by the Members, *provided* that this clause (v) does not apply to the matters addressed in clause (i) above and the application of this clause (v) shall nevertheless be subject to the application of clauses (ii), (iii) and (iv) above. Notwithstanding any of the foregoing, for so long as the Company operates a facility of NYSE Amex or a successor of NYSE Amex that is an SRO, any proposed amendment or repeal of any provision of the LLC Agreement or Members Agreement shall be submitted to the board of directors of NYSE Amex and, if such amendment or repeal is required under Section 19 of the Act and the rules promulgated thereunder, to be filed with, or filed with and approved by, the SEC before such amendment or repeal may be effective, then such amendment or repeal shall not be effective until filed with, or filed with and approved by, the SEC, as the case may be.

Redactions to the Members Agreement

Certain information in the Members Agreement has been redacted in order to preserve the confidentiality of commercially sensitive information. The redacted provisions are limited to (i) numerical dollar amounts and percentage thresholds, (ii) commercially sensitive terms and provisions related to the calculation of "Fair Market Value" and (iii) certain competitive information.

Regulation

NYSE Regulation, Inc. ("NYSE Regulation"), an indirect wholly-owned subsidiary of NYSE Euronext, and the Exchange entered into a regulatory services agreement (an "RSA") dated October 1, 2008 pursuant to which NYSE Regulation performs all of the Exchange's regulatory functions on the Exchange's behalf. However, certain of these member and market regulatory functions, which include surveillance, examination, investigation and related disciplinary functions, are performed by FINRA pursuant to a June 14, 2010 RSA among FINRA, NYSE Group, Inc., New York Stock Exchange LLC, NYSE Regulation, NYSE Arca, Inc. and the Exchange. FINRA and the Exchange have also entered into an allocation agreement pursuant to Section 17(d)(1) of the Act, and Rule 17d–2 thereunder, whereby FINRA assumed regulatory responsibility for specified rules that are common to FINRA and the Exchange and for common members. Because the Options Exchange is a facility of the Exchange, FINRA performs the applicable regulatory functions and responsibilities with respect to activity on or through the Options Exchange, including both general regulatory functions, as noted above, and targeted regulatory reviews as applicable.

Pursuant to the RSA between NYSE Regulation and the Exchange, NYSE Regulation exercises oversight, on behalf of the Exchange, of FINRA's performance of the regulatory functions performed by FINRA as described above. NYSE Regulation also has responsibilities with respect to the Options Exchange for rule interpretation, regulatory policy and participation in rule development. NYSE Regulation periodically reports on regulatory matters to the board of directors of the Exchange, which has appointed a Chief Regulatory Officer ("CRO") who is also the Chief Executive Officer of NYSE Regulation. The Exchange does not have a regulatory oversight committee of the board, but the CRO is also an officer of the Exchange, and in that capacity is charged with reporting on regulatory matters to the Exchange board. Notwithstanding the foregoing, the Exchange will still retain ultimate legal responsibility for the performance of all of its regulatory obligations as an SRO, including with respect to the Options Exchange, as well as the ability to take action as required to meet that responsibility.

The board of directors of the Exchange currently consists of five (5) directors, a majority of whom are required to be individuals domiciled in the U.S. who are classified as independent members of the NYSE Euronext board of directors. At least twenty percent of the Exchange's directors (currently one individual) must be "non-affiliated" directors who are not members of the NYSE Euronext board of directors and need not be independent under the independence requirements of NYSE Euronext. Any required non-affiliated directors of the Exchange are nominated and elected through a process designed to ensure fair representation of members of the Exchange on the Exchange's board. The Exchange does not have any committees of its board that perform functions relating to audit, governance and compensation. Instead, such functions are performed for the Exchange by related committees of the NYSE Euronext board of directors that are comprised solely of NYSE Euronext directors who meet the independence requirements of NYSE Euronext.

Decisions on the listing of options that will trade on the Options Exchange will be made by the business side at the Exchange in accordance with the Exchange's rules. The business side will also continue to be responsible for new product development, participation in rule development, strategic analysis, administering Exchange programs, business development and client outreach.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) [20] of the Act,[21] in general, and furthers the objectives of Section 6(b)(1) [22] of the Act, which requires a national securities exchange to be so organized and have the capacity to carry out the purposes of the Act and to comply, and to enforce compliance by its members and persons associated with its members, with the provisions of the Act. The proposed rule change does not modify the Option Exchange's trading or compliance rules and preserves the existing mechanisms for ensuring the Exchange's compliance with the Act. The structure of the proposed joint venture maintains NYSE Amex's regulatory control over the Options Exchange and includes provisions specifically designed to ensure the independence of its self-regulatory function and to ensure that any regulatory determinations by NYSE Amex, as SRO, are controlling with respect to the actions and decisions of the Options Exchange.

Additionally, the LLC Agreement requires the Company, its Members and its directors to comply with the Federal securities laws and the rules and regulations promulgated thereunder and to engage in conduct that fosters and does not interfere with the Exchange's or the Company's ability to carry out its respective responsibilities under the Act.

The Exchange believes the proposed rule change is also consistent with, and

[20] 15 U.S.C. 78f(b).

[21] 15 U.S.C. 78.

[22] 15 U.S.C. 78f(b)(1).

furthers the objectives of Section 6(b)(5)[23] of the Act, in that it preserves all of NYSE Amex's existing rules and mechanisms to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

Furthermore, by establishing a new corporate structure for the Company that includes new owners and a new governance structure, the Exchange believes the proposed rule change will increases [sic] the breadth of representation in the governance of the Options Exchange to include buy side, principal trading and sell side representatives. The increased representation of different market constituencies in the governance of the Options Exchange will foster cooperation and coordination with persons engaged in facilitating transactions in securities, will contribute to the identification of opportunities for innovation and will enhance competition.

Finally, the Exchange believes that the proposed rule change accomplishes the goals of Section 6(b) of the Act by improving the quality and depth of the listed options market. Specifically, with the approval of this proposed rule change, Members will have an incentive, through equity ownership, to offer an options market that provides products, services and fees that are competitive with those of other options markets. Moreover, given the substantial options experience and resources of the Members, the approval of this proposed rule change will provide the opportunity for enhanced liquidity and price discovery for the Options Exchange, thereby creating the opportunity for better-priced executions for options investors. A more competitive marketplace within the Options Exchange will also foster increased competition across all options markets with concomitant benefits to all U.S. options investors.

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.

[23] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEAmex–2011–18 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAmex–2011–18. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the Exchange's principal office. 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–2011–18 and should be submitted on or before April 25, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–7935 Filed 4–1–11; 8:45 am]

BILLING CODE 8011–01–P

[24] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12503 and #12504]

Hawaii Disaster #HI–00022

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Hawaii dated 03/29/2011.

Incident: Honshu Tsunami.

Incident Period: 03/11/2011.

Effective Date: 03/29/2011.

Physical Loan Application Deadline Date: 05/31/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 12/29/2011.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Hawaii.
Contiguous Counties: None.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	5.125
Homeowners Without Credit Available Elsewhere	2.563
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	3.250
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 12503 E and for economic injury is 12504 0.

The State which received an EIDL Declaration # is Hawaii.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: March 29, 2011.

Karen G. Mills,

Administrator.

[FR Doc. 2011–7950 Filed 4–1–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12505 and #12506]

California Disaster #CA–00167

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of California dated 03/29/2011.

Incident: Honshu Tsunami.
Incident Period: 03/11/2011.
Effective Date: 03/29/2011.
Physical Loan Application Deadline Date: 05/31/2011.
Economic Injury (EIDL) Loan Application Deadline Date: 12/29/2011.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Del Norte.

Contiguous Counties:

California: Humboldt, Siskiyou.

Oregon: Curry, Josephine.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	5.125
Homeowners Without Credit Available Elsewhere	2.563
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	3.250
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 12505 E and for economic injury is 12506 0.

The States which received an EIDL Declaration # are California, Oregon.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: March 29, 2011.

Karen G. Mills,

Administrator.

[FR Doc. 2011–7953 Filed 4–1–11; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice: 7407]

Bureau of Diplomatic Security, Office of Foreign Missions; 60-Day Notice of Proposed Information Collection: Form DS–4155, Vendor Application for OFM Website Account; & form DS–7576, Foreign Mission Emergency Afterhours Contact for Foreign Diplomatic Services Applications, OMB Collection Number 1405–0105

ACTION: Notice of request for public comments.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Vendor Application for OFM Website Account.
- *OMB Control Number:* 1405–0105.
- *Type of Request:* Extension of Currently Approved Collection.
- *Originating Office:* Diplomatic Security/Office of Foreign Missions (DS/OFM).
- *Form Numbers:* DS–4155.
- *Respondents:* Foreign government representatives assigned to the U.S. and bonded warehouse vendors.
- *Estimated Number of Respondents:* 1,005 missions.
- *Estimated Number of Responses:* 3,015 responses.
- *Average Hours per Response:* 20 minutes.
- *Total Estimated Burden:* 1,005 hours divided among the missions.
- *Frequency:* On occasion.
- *Obligation to Respond:* Required to obtain or retain a benefit.
- *Title of Information Collection:* Foreign Mission Emergency Afterhours Contact.
- *OMB Control Number:* 1405–0105.
- *Type of Request:* Extension of Currently Approved Collection.
- *Originating Office:* Diplomatic Security/Office of Foreign Missions (DS/OFM).
- *Form Number:* DS–7675.
- *Respondents:* Foreign government representatives assigned to the United States.
- *Estimated Number of Respondents:* 737 missions.
- *Estimated Number of Responses:* 737 forms per year.
- *Average Hours per Response:* 15 minutes.

• *Total Estimated Burden:* 184 hours divided among the missions.
• *Frequency:* Annually.
• *Obligation to Respond:* Required to obtain or retain a benefit.

DATES: The Department will accept comments from the public up to June 3, 2011.

ADDRESSES: You may submit comments by either of the following methods:
• *E-mail: OFMInfo@state.gov.*
• *Mail:* Attn: Jacqueline Robinson, U.S. Department of State, Diplomatic Security, Office of Foreign Missions, 2201 C Street, NW., Room 2238, Washington, DC 20520.

You must include the DS form number, information collection title, and OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed information collection and supporting documents, to Attn: Jacqueline Robinson, Diplomatic Security, Office of Foreign Missions, 2201 C Street, NW., Room 2238, Washington, DC 20520, who may be reached on (202) 647–3416 or *OFMInfo@state.gov.*

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:
• Evaluate whether the proposed information collection is necessary for the proper performance of our functions.
• Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
• Enhance the quality, utility, and clarity of the information to be collected.
• Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of proposed collection: Foreign Diplomatic Service Application Forms DS–4155 and DS–7675 are associated with OMB Collection number 1405–0105. Form DS–4155 (Vendor Application for OFM Website Account) is the means by which the Department of State (DOS) will provide authorized vendor access to the Office of Foreign Missions' electronic data submission (e-Gov) Bonded Warehouse program. This application will be used to determine eligibility and create a user account permitting bonded warehouse personnel, on behalf of foreign missions authorizing the request, to submit electronic bonded warehouse purchases (form DS–1504) for OFM clearance. OFM's e-Gov system is accessed to submit automated service requests to the Office of Foreign Missions and the Office of Protocol of the U.S. State Department to obtain "benefits" designated under the Vienna Convention on Diplomatic Relations (1961) (VCDR), the Vienna Convention on Consular Relations (1963) (VCCR), and the Foreign Missions Act, 22 U.S.C. 4301 *et seq.,* that must be obtained through the U.S. Department of State. Form DS–7675 is the means by which the DOS will maintain current emergency contact information on senior level officials assigned to foreign missions in the diplomatic and consular communities in the United States. The application requests the primary and deputy senior level points of contact information for both work and after work hours to use to communicate essential information in an emergency, crisis, or disaster situation. The applications provide the Department with the necessary information to administer its programs effectively and efficiently, as well as prepare for an emergency event.

Methodology: These applications/information collections are submitted by all foreign missions to the Office of Foreign Missions via the following methods: electronically, mail, or personal delivery.

Dated: March 22, 2011.

Bruce Matthews,

Managing Director, Bureau of Diplomatic Security, Office of Foreign Missions, U.S. Department of State.

[FR Doc. 2011–7928 Filed 4–1–11; 8:45 am]

BILLING CODE 4710–43–P

DEPARTMENT OF STATE

[Public Notice: 7396]

30-Day Notice of Proposed Information Collection: Performance Measurement, Evaluation and Public Diplomacy Program Surveys

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995.
• *Title of Information Collection:* Performance Measurement, Evaluation and Public Diplomacy Program Surveys.
• *OMB Control Number:* 1405–0158.
• *Type of Request:* Extension of a Currently Approved Collection.
• *Originating Office:* Bureau of Educational and Cultural Affairs, Office of Policy and Evaluation, Evaluation Division (ECA/P/V).
• *Form Number:* SV–2008–0005, SV–2008–0006, SV–2008–0011, SV–2008–0012, SV–2008–0013, SV–2008–0007.
• *Respondents:* Participants in ECA and PD programs, selected users of PD products and services, and others engaged in DOS efforts.
• *Estimated Number of Respondents:* 25,131 annually.
• *Estimated Number of Responses:* 25,131 annually.
• *Average Hours per Response:* 30 minutes per response.
• *Total Estimated Burden:* 12,565 hours.
• *Frequency:* On occasion.
• *Obligation to Respond:* Voluntary.

DATES: Submit comments to the Office of Management and Budget (OMB) for up to 30 days from April 4, 2011.

ADDRESSES: Direct comments to the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB). You may submit comments by the following methods:
• *E-mail: oira_submission@omb.eop.gov.* You must include the DS form number, information collection title, and OMB control number in the subject line of your message.
• *Fax:* 202–395–5806. Attention: Desk Officer for Department of State.

FOR FURTHER INFORMATION CONTACT: You may obtain copies of the proposed information collection and supporting documents from Juliet Dulles, who may be reached on 202–632–3344 or at *DullesJF@state.gov.*

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:
• Evaluate whether the proposed information collection is necessary to properly perform our functions.
• Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
• Enhance the quality, utility, and clarity of the information to be collected.
• Minimize the reporting burden on those who are to respond,

Abstract of Proposed Collection

The Department of State is requesting an extension of the currently approved clearance for performance measurement, evaluation and customer satisfaction surveys. Included in this request is a collection of questions designed to measure and evaluate the performance

of programs, products and services provided by the Bureau of Educational and Cultural Affairs (ECA), the Bureau of International Information Programs (IIP), and the Office of the Under Secretary for Public Diplomacy and Public Affairs, Office of Policy, Planning and Resources (R/PPR).

Methodology

More than 95% of the data collection uses electronic collection techniques. Technology is used in nearly every survey in which safety, security, programmatic, cultural or political concerns are not of sufficient magnitude to pose a negative impact on the respondent. Survey instruments are distributed via web-based or e-mail technology in PDF format, allowing the respondent to complete the survey and return it anytime during the survey period.

Additional Information: None.

Dated: March 25, 2011.

Larry Schwartz,

Director, Policy, Planning and Resources (R/PPR), U.S. Department of State.

[FR Doc. 2011–7931 Filed 4–1–11; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2008–25755]

Operating Limitations at New York LaGuardia Airport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Extension to Order.

SUMMARY: This action amends the Order Limiting Operations at New York LaGuardia Airport (LGA) that published on December 27, 2006, and was amended on November 8, 2007, August 19, 2008, and October 7, 2009. The Order remains effective until the final Congestion Management Rule for LaGuardia Airport, John F. Kennedy International Airport, and Newark Liberty International Airport becomes effective but not later than October 26, 2013.

DATES: This amendment is effective on April 4, 2011.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this Order contact: Gerry Shakley, System Operations Services, Air Traffic Organization, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9424; facsimile: (202) 267–7277; e-mail: *gerry.shakley@faa.gov.* For legal questions concerning this Order contact: Robert Hawks, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–7240; facsimile: (202) 267–7971; e-mail: *rob.hawks@faa.gov.*

SUPPLEMENTARY INFORMATION:

Availability of Rulemaking Documents

You may obtain an electronic copy using the Internet by:

(1) Searching the Federal eRulemaking Portal (*http://www.regulations.gov*);

(2) Visiting the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies/;* or

(3) Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html.*

You also may obtain a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the amendment number or docket number of this rulemaking.

Background

Due to LGA's limited runway capacity, the airport cannot accommodate the number of flights that airlines and others would like to operate without causing significant congestion. The FAA has long limited the number of arrivals and departures at LGA during peak demand periods through the implementation of the High Density Rule (HDR).[1] By statute enacted in April 2000, the HDR's applicability to LGA operations terminated as of January 1, 2007.[2]

In anticipation of the HDR's expiration, the FAA proposed a long-term rule that would limit the number of scheduled and unscheduled operations at LGA.[3] The FAA issued an Order on December 27, 2006, adopting temporary limits pending the completion of the rulemaking.[4] This Order was amended on November 8, 2007, and August 19, 2008.[5] On October 10, 2008, the FAA published the Congestion Management Rule for LaGuardia Airport, which would have become effective on December 9, 2008.[6] That rule was stayed by the U.S. Court of Appeals for the District of Columbia Circuit and subsequently rescinded by the FAA.[7] This Order was further extended on October 7, 2009.[8]

Under the Order, as amended, the FAA (1) Maintains the current hourly limits on scheduled (75) and unscheduled (three) operations at LGA during the peak period; (2) imposes an 80 percent minimum usage requirement for Operating Authorizations (OAs) with defined exceptions; (3) provides a mechanism for withdrawal of OAs for FAA operational reasons; (4) provides for a lottery to reallocate withdrawn, surrendered, or unallocated OAs; and (5) allows for trades and leases of OAs for consideration for the duration of the Order. Without the operational limitations imposed by this Order, the FAA expects severe congestion-related delays would occur at LGA and at other airports throughout the National Airspace System (NAS).

The FAA is engaged in a rulemaking effort to implement a long-term congestion management rule at LGA, John F. Kennedy International Airport (JFK), and Newark Liberty International Airport (EWR). The FAA anticipates publishing a notice of proposed rulemaking for the Congestion Management Rule for LaGuardia Airport, John F. Kennedy International Airport, and Newark Liberty International Airport (RIN 2120–AJ89) during the summer of 2011. To prevent this Order from expiring prior to a final rule becoming effective, the FAA has concluded it is necessary to extend the expiration date of this Order until the final Congestion Management Rule for LaGuardia Airport, John F. Kennedy International Airport, and Newark Liberty International Airport becomes effective but not later than October 26, 2013. This expiration date coincides with the expiration dates for the Orders limiting scheduled operations at JFK and EWR, as also amended by notices in today's **Federal Register**.

Therefore, the FAA finds that notice and comment procedures under 5 U.S.C. section 553(b) are impracticable and contrary to the public interest. The FAA further finds that good cause exists to

[1] 33 FR 17896 (Dec. 3, 1968). The FAA codified the rules for operating at high density traffic airports in 14 CFR part 93, subpart K. The HDR required carriers to hold a reservation, which came to be known as a "slot," for each takeoff or landing under instrument flight rules at the high density traffic airports.

[2] Aviation Investment and Reform Act for the 21st Century (AIR–21), Public Law 106–181 (Apr. 5, 2000), 49 U.S.C. 41715(a)(2).

[3] 71 FR 51360 (August 29, 2006); Docket FAA–2006–25709. The FAA subsequently published a Supplemental Notice of Proposed Rulemaking. 73 FR 20846 (Apr. 17, 2008).

[4] 71 FR 77854.

[5] 72 FR 63224; 73 FR 48428.

[6] 73 FR 60574, amended by 73 FR 66517 (Nov. 10, 2008).

[7] 74 FR 52134 (Oct. 9, 2009).

[8] 74 FR 51653.

make this Order effective in less than 30 days.

The Amended Order

The Order, as amended, is recited below in its entirety.

A. Scheduled Operations

With respect to scheduled operations at LaGuardia:

1. The final Order governs scheduled arrivals and departures at LaGuardia from 6 a.m. through 9:59 p.m., Eastern Time, Monday through Friday and from 12 noon through 9:59 p.m., Eastern Time, Sunday.

2. The final Order takes effect on January 1, 2007, and will expire when the final Congestion Management Rule for LaGuardia Airport, John F. Kennedy International Airport, and Newark Liberty International Airport becomes effective but not later than October 26, 2013.

3. The FAA will assign operating authority to conduct an arrival or a departure at LaGuardia during the affected hours to the air carrier that holds equivalent slot or slot exemption authority under the High Density Rule of FAA slot exemption rules as of January 1, 2007; to the primary marketing air carrier in the case of AIR–21 small hub/nonhub airport slot exemptions; or to the air carrier operating the flights as of January 1, 2007, in the case of a slot held by a non carrier. The FAA will not assign operating authority under the final Order to any person or entity other than a certificated U.S. or foreign air carrier with appropriate economic authority under 14 CFR part 121, 129 or 135. The Chief Counsel of the FAA will be the final decision maker regarding the initial assignment of Operating Authorizations.

4. For administrative tracking purposes only, the FAA will assign an identification number to each Operating Authorization.

5. An air carrier can lease or trade an Operating Authorization to another carrier for any consideration, not to exceed the duration of the Order. Notice of a trade or lease under this paragraph must be submitted in writing to the FAA Slot Administration Office, facsimile (202) 267–7277 or e-mail *7–AWASlotadmin@faa.gov,* and must come from a designated representative of each carrier. The FAA must confirm and approve these transactions in writing prior to the effective date of the transaction. However, the FAA will approve transfers between carriers under the same marketing control up to 5 business days after the actual operation. This post-transfer approval is limited to accommodate operational disruptions that occur on the same day of the scheduled operation.

6. Each air carrier holding an Operating Authorization must forward in writing to the FAA Slot Administration Office a list of all Operating Authorizations held by the carrier along with a listing of the Operating Authorizations actually operated for each day of the two-month reporting period within 14 days after the last day of the two-month reporting period beginning January 1 and every two months thereafter. Any Operating Authorization not used at least 80 percent of the time over a two-month period will be withdrawn by the FAA except:

A. The FAA will treat as used any Operating Authorization held by an air carrier on Thanksgiving Day, the Friday following Thanksgiving Day, and the period from December 24 through the first Saturday in January.

B. The FAA will treat as used any Operating Authorization obtained by an air carrier through a lottery under paragraph 7 for the first 120 days after allocation in the lottery.

C. The Administrator of the FAA may waive the 80 percent usage requirement in the event of a highly unusual and unpredictable condition which is beyond the control of the air carrier and which affects carrier operations for a period of five consecutive days or more.

7. In the event that Operating Authorizations are withdrawn for nonuse, surrendered to the FAA or are unassigned, the FAA will determine whether any of the available Operating Authorizations should be reallocated. If so, the FAA will conduct a lottery using the provisions specified under 14 CFR 93.225. The FAA may retime an Operating Authorization prior to reallocation in order to address operational needs. When the final Order expires, any Operating Authorizations reassigned under this paragraph, except those assigned to new entrants or limited incumbents, will revert to the FAA for reallocation according to the reallocation mechanism prescribed in the final rule that succeeds the final Order.

8. If the FAA determines that a reduction in the number of allocated Operating Authorizations is required to meet operational needs, such as reduced airport capacity, the FAA will conduct a weighted lottery to withdraw Operating Authorizations to meet a reduced hourly or half-hourly limit for scheduled operations. The FAA will provide at least 45 days' notice unless otherwise required by operational needs. Any Operating Authorization that is withdrawn or temporarily suspended will, if reallocated, be reallocated to the air carrier from which it was taken, provided that the air carrier continues to operate scheduled service at LaGuardia.

9. The FAA will enforce the final Order through an enforcement action seeking a civil penalty under 49 U.S.C. 46301(a). An air carrier that is not a small business as defined in the Small Business Act, 15 U.S.C. 632, would be liable for a civil penalty of up to $25,000 for every day that it violates the limits set forth in the final Order. An air carrier that is a small business as defined in the Small Business Act would be liable for a civil penalty of up to $10,000 for every day that it violates the limits set forth in the final Order. The FAA also could file a civil action in U.S. District Court, under 49 U.S.C. 46106, 46107, seeking to enjoin any air carrier from violating the terms of the final Order.

B. Unscheduled Operations [9]

With respect to unscheduled flight operations at LaGuardia, the FAA adopts the following:

1. The final order applies to all operators of unscheduled flights, except helicopter operations, at LaGuardia from 6 a.m. through 9:59 p.m., Eastern Time, Monday through Friday and from 12 noon through 9:59 p.m., Eastern Time, Sunday.

2. The final Order takes effect on January 1, 2007, and will expire when the final Congestion Management Rule for LaGuardia Airport, John F. Kennedy International Airport, and Newark Liberty International Airport becomes effective but not later than October 26, 2013.

3. No person can operate an aircraft other than a helicopter to or from LaGuardia unless the operator has received, for that unscheduled operation, a reservation that is assigned by the David J. Hurley Air Traffic Control System Command Center's Airport Reservation Office (ARO). Additional information on procedures for obtaining a reservation will be available via the Internet at *http://www.fly.faa.gov/ecvrs.*

[9] Unscheduled operations are operations other than those regularly conducted by an air carrier between LaGuardia and another service point. Unscheduled operations include general aviation, public aircraft, military, charter, ferry, and positioning flights. Helicopter operations are excluded from the reservation requirement. Reservations for unscheduled flights operating under visual flight rules (VFR) are granted when the aircraft receives clearance from air traffic control to land or depart LaGuardia. Reservations for unscheduled VFR flights are not included in the limits for unscheduled operators.

4. Three (3) reservations are available per hour for unscheduled operations at LaGuardia. The ARO will assign reservations on a 30-minute basis.

5. The ARO receives and processes all reservation requests. Reservations are assigned on a "first-come, first-served" basis, determined as of the time that the ARO receives the request. A cancellation of any reservation that will not be used as assigned would be required.

6. Filing a request for a reservation does not constitute the filing of an instrument flight rules (IFR) flight plan, as separately required by regulation. After the reservation is obtained, an IFR flight plan can be filed. The IFR flight plan must include the reservation number in the "remarks" section.

7. Air Traffic Control will accommodate declared emergencies without regard to reservations. Nonemergency flights in direct support of national security, law enforcement, military aircraft operations, or public use aircraft operations will be accommodated above the reservation limits with the prior approval of the Vice President, System Operations Services, Air Traffic Organization. Procedures for obtaining the appropriate reservation for such flights are available via the Internet at *http://www.fly.faa.gov/ecvrs.*

8. Notwithstanding the limits in paragraph 4, if the Air Traffic Organization determines that air traffic control, weather, and capacity conditions are favorable and significant delay is not likely, the FAA can accommodate additional reservations over a specific period. Unused operating authorizations can also be temporarily made available for unscheduled operations. Reservations for additional operations are obtained through the ARO.

9. Reservations cannot be bought, sold, or leased.

Issued in Washington, DC on March 28, 2011.

Rebecca B. MacPherson,

Assistant Chief Counsel for Regulations.

[FR Doc. 2011–7843 Filed 4–1–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2008–0221]

Operating Limitations at Newark Liberty International Airport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Extension to Order.

SUMMARY: This action amends the Order Limiting Operations at Newark Liberty International Airport (EWR) that published on May 21, 2008, and was amended on October 7, 2009. The Order remains effective until the final Congestion Management Rule for LaGuardia Airport, John F. Kennedy International Airport, and Newark Liberty International Airport becomes effective but not later than October 26, 2013.

DATES: This amendment is effective on April 4, 2011.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this Order contact: Gerry Shakley, System Operations Services, Air Traffic Organization, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; *telephone:* (202) 267–9424; *facsimile:* (202) 267–7277; *e-mail: gerry.shakley@faa.gov.*

For legal questions concerning this Order contact: Robert Hawks, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; *telephone:* (202) 267–7240; *facsimile:* (202) 267–7971; *e-mail: rob.hawks@faa.gov.*

SUPPLEMENTARY INFORMATION:

Availability of Rulemaking Documents

You may obtain an electronic copy using the Internet by:

(1) Searching the Federal eRulemaking Portal (*http://www.regulations.gov*);

(2) Visiting the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies/;* or

(3) Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html.*

You also may obtain a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the amendment number or docket number of this rulemaking.

Background

Over the past several years, EWR has grown to be one of the most delay-prone airports in the country. In 2007, demand during peak hours approached or exceeded the average runway capacity, resulting in significant volume-related delays. In May 2008, the FAA placed temporary limits on scheduled operations at EWR to mitigate persistent congestion and delays at the airport.[1] This Order also mitigated FAA's concern about a spillover effect resulting from limiting operations at John F. Kennedy International Airport (JFK). With a temporary schedule limit order in place, the FAA proposed a long-term rule that would limit the number of scheduled and unscheduled operations at EWR.[2] On October 10, 2008, the FAA published the Congestion Management Rule for John F. Kennedy International Airport and Newark Liberty International Airport, which would have become effective on December 9, 2008.[3] That rule was stayed by the U.S. Court of Appeals for the District of Columbia Circuit and subsequently rescinded by the FAA.[4] This Order was further extended on October 7, 2009.[5]

Under the Order, as amended, the FAA (1) maintains the current hourly limits on 81 scheduled operations at EWR during the peak period; (2) imposes an 80 percent minimum usage requirement for Operating Authorizations (OAs) with defined exceptions; (3) provides a mechanism for withdrawal of OAs for FAA operational reasons; (4) establishes procedures to allocate withdrawn, surrendered, or unallocated OAs; and (5) allows for trades and leases of OAs for consideration for the duration of the Order. Without the operational limitations imposed by this Order, the FAA expects severe congestion-related delays would occur at EWR and at other airports throughout the National Airspace System (NAS).

The FAA is engaged in a rulemaking effort to implement a long-term congestion management rule at LaGuardia Airport (LGA), JFK, and EWR. The FAA anticipates publishing a notice of proposed rulemaking for the Congestion Management Rule for LaGuardia Airport, John F. Kennedy International Airport, and Newark Liberty International Airport (RIN 2120–AJ89) during the summer of 2011. To prevent this Order from expiring prior to a final rule becoming effective, the FAA has concluded it is necessary to extend the expiration date of this Order until the final Congestion Management Rule for LaGuardia Airport, John F. Kennedy International Airport, and Newark Liberty International Airport becomes effective but not later than

[1] 73 FR 29550 (May 21, 2008), as amended by 74 FR 51648 (Oct. 7, 2009).

[2] 73 FR 29626 (May 21, 2008); Docket FAA–2008–0517.

[3] 73 FR 60574, amended by 73 FR 66516 (Nov. 10, 2008).

[4] 74 FR 52134 (Oct. 9, 2009).

[5] 74 FR 51648.

October 26, 2013. This expiration date coincides with the expiration dates for the Orders limiting scheduled operations at JFK and LGA, as also amended by notices in today's **Federal Register**.

Therefore, the FAA finds that notice and comment procedures under 5 U.S.C. section 553(b) are impracticable and contrary to the public interest. The FAA further finds that good cause exists to make this Order effective in less than 30 days.

The Amended Order

The Order, as amended, is recited below in its entirety.

1. This Order assigns operating authority to conduct an arrival or a departure at EWR during the affected hours to the U.S. air carrier or foreign air carrier identified in the appendix to this Order. The FAA will not assign operating authority under this Order to any person or entity other than a certificated U.S. or foreign air carrier with appropriate economic authority and FAA operating authority under 14 CFR part 121, 129, or 135. This Order applies to the following:

a. All U.S. air carriers and foreign air carriers conducting scheduled operations at EWR as of the date of this Order, any U.S. air carrier or foreign air carrier that operates under the same designator code as such a carrier, and any air carrier or foreign-flag carrier that has or enters into a codeshare agreement with such a carrier.

b. All U.S. air carriers or foreign air carriers initiating scheduled or regularly conducted commercial service to EWR while this Order is in effect.

c. The Chief Counsel of the FAA, in consultation with the Vice President, System Operations Services, is the final decisionmaker for determinations under this Order.

2. This Order governs scheduled arrivals and departures at EWR from 6 a.m. through 10:59 p.m., Eastern Time, Sunday through Saturday.

3. This Order takes effect at 6 a.m., Eastern Time, on June 20, 2008, and will expire when the final Congestion Management Rule for LaGuardia Airport, John F. Kennedy International Airport, and Newark Liberty International Airport becomes effective but not later than October 26, 2013.

4. Under the authority provided to the Secretary of Transportation and the FAA Administrator by 49 U.S.C. 40101, 40103 and 40113, we hereby order that:

a. No U.S. air carrier or foreign air carrier initiating or conducting scheduled or regularly conducted commercial service at EWR may conduct such operations without an Operating Authorization assigned by the FAA.

b. Except as provided in the appendix to this Order, scheduled U.S. air carrier and foreign air carrier arrivals and departures will not exceed 81 per hour from 6 a.m. through 10:59 p.m., Eastern Time.

c. The Administrator may change the limits if he determines that capacity exists to accommodate additional operations without a significant increase in delays.

5. For administrative tracking purposes only, the FAA will assign an identification number to each Operating Authorization.

6. A carrier holding an Operating Authorization may request the Administrator's approval to move any arrival or departure scheduled from 6 a.m. through 10:59 p.m. to another half hour within that period. Except as provided in paragraph seven, the carrier must receive the written approval of the Administrator, or his delegate, prior to conducting any scheduled arrival or departure that is not listed in the appendix to this Order. All requests to move an allocated Operating Authorization must be submitted to the FAA Slot Administration Office, facsimile (202) 267–7277 or e-mail *7–AWA–Slotadmin@faa.gov,* and must come from a designated representative of the carrier. If the FAA cannot approve a carrier's request to move a scheduled arrival or departure, the carrier may then apply for a trade in accordance with paragraph seven.

7. For the duration of this Order, a carrier may enter into a lease or trade of an Operating Authorization to another carrier for any consideration. Notice of a trade or lease under this paragraph must be submitted in writing to the FAA Slot Administration Office, facsimile (202) 267–7277 or e-mail *7–AWA–Slotadmin@faa.gov,* and must come from a designated representative of each carrier. The FAA must confirm and approve these transactions in writing prior to the effective date of the transaction. The FAA will approve transfers between carriers under the same marketing control up to five business days after the actual operation, but only to accommodate operational disruptions that occur on the same day of the scheduled operation. The FAA's approval of a trade or lease does not constitute a commitment by the FAA to grant the associated historical rights to any operator in the event that slot controls continue at EWR after this order expires.

8. A carrier may not buy, sell, trade, or transfer an Operating Authorization, except as described in paragraph seven.

9. Historical rights to Operating Authorizations and withdrawal of those rights due to insufficient usage will be determined on a seasonal basis and in accordance with the schedule approved by the FAA prior to the commencement of the applicable season.

a. For each day of the week that the FAA has approved an operating schedule, any Operating Authorization not used at least 80% of the time over the period authorized by the FAA under this paragraph will be withdrawn by the FAA for the next applicable season except:

i. The FAA will treat as used any Operating Authorization held by a carrier on Thanksgiving Day, the Friday following Thanksgiving Day, and the period from December 24 through the first Saturday in January.

ii. The Administrator of the FAA may waive the 80% usage requirement in the event of a highly unusual and unpredictable condition which is beyond the control of the carrier and which affects carrier operations for a period of five consecutive days or more.

b. Each carrier holding an Operating Authorization must forward in writing to the FAA Slot Administration Office a list of all Operating Authorizations held by the carrier and for each Operating Authorization, along with a listing of the Operating Authorizations and:

i. The dates within each applicable season on which it intends to commence and to cease scheduled operations.

A. For each winter scheduling season, the report must be received by the FAA no later than August 15 during the preceding summer.

B. For each summer scheduling season, the report must be received by the FAA no later than January 15 during the preceding winter.

ii. The completed operations for each day of the applicable scheduling season:

A. No later than September 1 for the summer scheduling season.

B. No later than January 15 for the winter scheduling season.

iii. A final report of the completed operations for each day of the scheduling season within 30 days after the last day of the applicable scheduling season.

10. In the event that a carrier surrenders to the FAA any Operating Authorization assigned to it under this Order or if there are unallocated Operating Authorizations, the FAA will determine whether the Operating Authorizations should be reallocated. The FAA may temporarily allocate an Operating Authorization at its discretion. Such temporary allocations will not be entitled to historical status

for the next applicable scheduling season under paragraph 9.

11. If the FAA determines that an involuntary reduction in the number of allocated Operating Authorizations is required to meet operational needs, such as reduced airport capacity, the FAA will conduct a weighted lottery to withdraw Operating Authorizations to meet a reduced hourly or half-hourly limit for scheduled operations. The FAA will provide at least 45 days' notice unless otherwise required by operational needs. Any Operating Authorization that is withdrawn or temporarily suspended will, if reallocated, be reallocated to the carrier from which it was taken, provided that the carrier continues to operate scheduled service at EWR.

12. The FAA will enforce this Order through an enforcement action seeking a civil penalty under 49 U.S.C. 46301(a). A carrier that is not a small business as defined in the Small Business Act, 15 U.S.C. 632, will be liable for a civil penalty of up to $25,000 for every day that it violates the limits set forth in this Order. A carrier that is a small business as defined in the Small Business Act will be liable for a civil penalty of up to $10,000 for every day that it violates the limits set forth in this Order. The FAA also could file a civil action in U.S. District Court, under 49 U.S.C. 46106, 46107, seeking to enjoin any air carrier from violating the terms of this Order.

13. The FAA may modify or withdraw any provision in this Order on its own or on application by any carrier for good cause shown.

Issued in Washington, DC, on March 28, 2011.

Rebecca B. MacPherson,

Assistant Chief Counsel for Regulations.

[FR Doc. 2011–7845 Filed 4–1–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2007–29320]

Operating Limitations at John F. Kennedy International Airport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Extension to Order.

SUMMARY: This action amends the Order Limiting Operations at John F. Kennedy International Airport (JFK) that published on January 18, 2008, and was amended on February 14, 2008, and October 7, 2009. The Order remains effective until the final Congestion Management Rule for LaGuardia Airport, John F. Kennedy International Airport, and Newark Liberty International Airport becomes effective but not later than October 26, 2013.

DATES: This amendment is effective on April 4, 2011.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this Order contact: Gerry Shakley, System Operations Services, Air Traffic Organization, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; *telephone:* (202) 267–9424; *facsimile:* (202) 267–7277; *e-mail: gerry.shakley@faa.gov*.

For legal questions concerning this Order contact: Robert Hawks, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; *telephone:* (202) 267–7240; *facsimile:* (202) 267–7971; *e-mail: rob.hawks@faa.gov*.

SUPPLEMENTARY INFORMATION:

Availability of Rulemaking Documents

You may obtain an electronic copy using the Internet by:

(1) Searching the Federal eRulemaking Portal (*http://www.regulations.gov*);

(2) Visiting the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies/;* or

(3) Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html*.

You also may obtain a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the amendment number or docket number of this rulemaking.

Background

Until recently, most operations at JFK took place during relatively pronounced arrival and departure banks corresponding to the operating windows of transatlantic flights. The FAA had limited the number of arrivals and departures at JFK during the peak afternoon demand period through the implementation of the High Density Rule (HDR).[1] By statute enacted in April 2000, the HDR's applicability to JFK operations terminated as of January 1, 2007.[2] Using AIR–21 exemptions and the HDR phase-out, U.S. air carriers serving JFK significantly increased their domestic scheduled operations throughout the day. This increase in operations resulted in significant congestion and delays that negatively impacted the National Airspace System (NAS). In January 2008, the FAA placed temporary limits on scheduled operations at JFK to mitigate persistent congestion and delays at the airport.[3] With a temporary schedule limit order in place, the FAA proposed a long-term rule that would limit the number of scheduled and unscheduled operations at JFK.[4] On October 10, 2008, the FAA published the Congestion Management Rule for John F. Kennedy International Airport and Newark Liberty International Airport, which would have become effective on December 9, 2008.[5] That rule was stayed by the U.S. Court of Appeals for the District of Columbia Circuit and subsequently rescinded by the FAA.[6] This Order was further extended on October 7, 2009.[7]

Under the Order, as amended, the FAA (1) maintains the current hourly limits on 81 scheduled operations at JFK during the peak period; (2) imposes an 80 percent minimum usage requirement for Operating Authorizations (OAs) with defined exceptions; (3) provides a mechanism for withdrawal of OAs for FAA operational reasons; (4) establishes procedures to allocate withdrawn, surrendered, or unallocated OAs; and (5) allows for trades and leases of OAs for consideration for the duration of the Order. Without the operational limitations imposed by this Order, the FAA expects severe congestion-related delays would occur at JFK and at other airports throughout the NAS.

The FAA is engaged in a rulemaking effort to implement a long-term congestion management rule at LaGuardia Airport (LGA), JFK, and Newark Liberty International Airport (EWR). The FAA anticipates publishing a notice of proposed rulemaking for the Congestion Management Rule for LaGuardia Airport, John F. Kennedy International Airport, and Newark Liberty International Airport (RIN 2120–AJ89) during the summer of 2011. To prevent this Order from expiring prior

[1] 33 FR 17896 (Dec. 3, 1968). The FAA codified the rules for operating at high density traffic airports in 14 CFR part 93, subpart K. The HDR required carriers to hold a reservation, which came to be known as a "slot," for each takeoff or landing under instrument flight rules at the high density traffic airports.

[2] Aviation Investment and Reform Act for the 21st Century (AIR–21), Public Law 106–181 (Apr. 5, 2000), 49 U.S.C. 41715(a)(2).

[3] 73 FR 3512 (Jan. 18, 2008), as amended by 73 FR 8737 (Feb. 14, 2008).

[4] 73 FR 29626 (May 21, 2008); Docket FAA–2008–0517.

[5] 73 FR 60574, amended by 73 FR 66516 (Nov. 10, 2008).

[6] 74 FR 52134 (Oct. 9, 2009).

[7] 74 FR 51650.

to a final rule becoming effective, the FAA has concluded it is necessary to extend the expiration date of this Order until the final Congestion Management Rule for LaGuardia Airport, John F. Kennedy International Airport, and Newark Liberty International Airport becomes effective but not later than October 26, 2013. This expiration date coincides with the expiration dates for the Orders limiting scheduled operations at EWR and LGA, as also amended by notices in today's **Federal Register**.

Therefore, the FAA finds that notice and comment procedures under 5 U.S.C. section 553(b) are impracticable and contrary to the public interest. The FAA further finds that good cause exists to make this Order effective in less than 30 days.

The Amended Order

The Order, as amended, is recited below in its entirety.

1. This Order assigns operating authority to conduct an arrival or a departure at JFK during the affected hours to the U.S. air carrier or foreign air carrier identified in the appendix to this Order. The FAA will not assign operating authority under this Order to any person or entity other than a certificated U.S. or foreign air carrier with appropriate economic authority and FAA operating authority under 14 CFR part 121, 129, or 135. This Order applies to the following:

a. All U.S. air carriers and foreign air carriers conducting scheduled operations at JFK as of the date of this Order, any U.S. air carrier or foreign air carrier that operates under the same designator code as such a carrier, and any air carrier or foreign-flag carrier that has or enters into a codeshare agreement with such a carrier.

b. All U.S. air carriers or foreign air carriers initiating scheduled or regularly conducted commercial service to JFK while this Order is in effect.

c. The Chief Counsel of the FAA, in consultation with the Vice President, System Operations Services, is the final decisionmaker for determinations under this Order.

2. This Order governs scheduled arrivals and departures at JFK from 6 a.m. through 10:59 p.m., Eastern Time, Sunday through Saturday.

3. This Order takes effect on March 30, 2008, and will expire when the final Congestion Management Rule for LaGuardia Airport, John F. Kennedy International Airport, and Newark Liberty International Airport becomes effective but not later than October 26, 2013.

4. Under the authority provided to the Secretary of Transportation and the FAA Administrator by 49 U.S.C. 40101, 40103 and 40113, we hereby order that:

a. No U.S. air carrier or foreign air carrier initiating or conducting scheduled or regularly conducted commercial service at JFK may conduct such operations without an Operating Authorization assigned by the FAA.

b. Except as provided in the appendix to this Order, scheduled U.S. air carrier and foreign air carrier arrivals and departures will not exceed 81 per hour from 6 a.m. through 10:59 p.m., Eastern Time.

c. The Administrator may change the limits if he determines that capacity exists to accommodate additional operations without a significant increase in delays.

5. For administrative tracking purposes only, the FAA will assign an identification number to each Operating Authorization.

6. A carrier holding an Operating Authorization may request the Administrator's approval to move any arrival or departure scheduled from 6 a.m. through 10:59 p.m. to another half hour within that period. Except as provided in paragraph seven, the carrier must receive the written approval of the Administrator, or his delegate, prior to conducting any scheduled arrival or departure that is not listed in the appendix to this Order. All requests to move an allocated Operating Authorization must be submitted to the FAA Slot Administration Office, facsimile (202) 267–7277 or e-mail *7–AWA–Slotadmin@faa.gov,* and must come from a designated representative of the carrier. If the FAA cannot approve a carrier's request to move a scheduled arrival or departure, the carrier may then apply for a trade in accordance with paragraph seven.

7. For the duration of this Order, a carrier may enter into a lease or trade of an Operating Authorization to another carrier for any consideration. Notice of a trade or lease under this paragraph must be submitted in writing to the FAA Slot Administration Office, facsimile (202) 267–7277 or e-mail *7–AWASlotadmin@faa.gov,* and must come from a designated representative of each carrier. The FAA must confirm and approve these transactions in writing prior to the effective date of the transaction. The FAA will approve transfers between carriers under the same marketing control up to five business days after the actual operation, but only to accommodate operational disruptions that occur on the same day of the scheduled operation. The FAA's approval of a trade or lease does not constitute a commitment by the FAA to grant the associated historical rights to any operator in the event that slot controls continue at JFK after this order expires.

8. A carrier may not buy, sell, trade, or transfer an Operating Authorization, except as described in paragraph seven.

9. Historical rights to Operating Authorizations and withdrawal of those rights due to insufficient usage will be determined on a seasonal basis and in accordance with the schedule approved by the FAA prior to the commencement of the applicable season.

a. For each day of the week that the FAA has approved an operating schedule, any Operating Authorization not used at least 80% of the time over the time-frame authorized by the FAA under this paragraph will be withdrawn by the FAA for the next applicable season except:

i. The FAA will treat as used any Operating Authorization held by a carrier on Thanksgiving Day, the Friday following Thanksgiving Day, and the period from December 24 through the first Saturday in January.

ii. The Administrator of the FAA may waive the 80% usage requirement in the event of a highly unusual and unpredictable condition which is beyond the control of the carrier and which affects carrier operations for a period of five consecutive days or more.

b. Each carrier holding an Operating Authorization must forward in writing to the FAA Slot Administration Office a list of all Operating Authorizations held by the carrier along with a listing of the Operating Authorizations and:

i. The dates within each applicable season it intends to commence and complete operations.

A. For each winter scheduling season, the report must be received by the FAA no later than August 15 during the preceding summer.

B. For each summer scheduling season, the report must be received by the FAA no later than January 15 during the preceding winter.

ii. The completed operations for each day of the applicable scheduling season:

A. No later than September 1 for the summer scheduling season.

B. No later than January 15 for the winter scheduling season.

iii. The completed operations for each day of the scheduling season within 30 days after the last day of the applicable scheduling season.

10. In the event that a carrier surrenders to the FAA any Operating Authorization assigned to it under this Order or if there are unallocated Operating Authorizations, the FAA will determine whether the Operating

Authorizations should be reallocated. The FAA may temporarily allocate an Operating Authorization at its discretion. Such temporary allocations will not be entitled to historical status for the next applicable scheduling season under paragraph 9.

11. If the FAA determines that an involuntary reduction in the number of allocated Operating Authorizations is required to meet operational needs, such as reduced airport capacity, the FAA will conduct a weighted lottery to withdraw Operating Authorizations to meet a reduced hourly or half-hourly limit for scheduled operations. The FAA will provide at least 45 days' notice unless otherwise required by operational needs. Any Operating Authorization that is withdrawn or temporarily suspended will, if reallocated, be reallocated to the carrier from which it was taken, provided that the carrier continues to operate scheduled service at JFK.

12. The FAA will enforce this Order through an enforcement action seeking a civil penalty under 49 U.S.C. 46301(a). A carrier that is not a small business as defined in the Small Business Act, 15 U.S.C. 632, will be liable for a civil penalty of up to $25,000 for every day that it violates the limits set forth in this Order. A carrier that is a small business as defined in the Small Business Act will be liable for a civil penalty of up to $10,000 for every day that it violates the limits set forth in this Order. The FAA also could file a civil action in U.S. District Court, under 49 U.S.C. 46106, 46107, seeking to enjoin any air carrier from violating the terms of this Order.

13. The FAA may modify or withdraw any provision in this Order on its own or on application by any carrier for good cause shown.

Issued in Washington, DC on March 28, 2011.

Rebecca B. MacPherson,

Assistant Chief Counsel for Regulations.

[FR Doc. 2011–7841 Filed 4–1–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Request To Release Airport Property at the Helena Regional Airport, Helena, MT

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

ACTION: Notice of request to release airport property.

SUMMARY: The FAA proposes to rule and invite public comment on the release of land at Helena Regional Airport (HLN) under the provisions of Section 125 of the Wendell H. Ford Aviation Investment Reform Act for the 21st Century (AIR 21), now 49 U.S.C. 47107(h)(2).

DATES: Comments must be received on or before May 4, 2011.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Mr. David S. Stelling, Manager, Federal Aviation Administration, Northwest Mountain Region, Airports Division, Helena Airports District Office, 2725 Skyway Drive, Suite 2, Helena, Montana 59602.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Ronald Mercer, Airport Director, Helena Regional Airport Authority (HRAA), at the following address: Mr. Ronald Mercer, Airport Director, Helena Regional Airport Authority, 2850 Skyway Drive, Helena, Montana 59602.

FOR FURTHER INFORMATION CONTACT: Mr. Gary Gates, Airport Planner/Engineer, Federal Aviation Administration, Northwest Mountain Region, Airports Division, Helena Airports District Office, 2725 Skyway Drive, Suite 2, Helena, Montana 59602.

The request to release property may be reviewed, by appointment, in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release property at HLN under the provisions of the AIR 21 (49 U.S.C. 47107(h)(2)).

On March 24, 2011 the FAA determined that the March 23, 2011 request submitted by HRAA to release property at HLN meets the procedural requirements of the FAA. The FAA may approve the request, in whole or in part, no later than May 4, 2011.

The following is a brief overview of the request:

HRAA is proposing the release of approximately 1,699 square feet of non-aeronautical airport property at HLN to the State of Montana Department of Transportation, to be used as right-of-way for the north traffic exit lane on Interstate Highway 15 at the Custer Avenue interchange in Helena, Montana. The interchange is expected to be constructed in 2011 and 2012 and will provide improved access to HLN and the community.

Any person may inspect, by appointment, the request in person at the FAA office listed above under the heading: **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon appointment and request, inspect the application, notice and other documents germane to the application in person at Airport Administration Office, Helena Regional Airport, Helena, Montana.

Issued in Helena, Montana, on March 25, 2011.

David S. Stelling,

Manager, Helena Airports District Office.

[FR Doc. 2011–7834 Filed 4–1–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Submission Deadline for Schedule Information for O'Hare International Airport, John F. Kennedy International Airport, and Newark Liberty International Airport for the Winter 2011–2012 Scheduling Season

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

ACTION: Notice of submission deadline.

SUMMARY: Under this notice, the FAA announces the submission deadline of May 19, 2011, for Winter 2011–2012 flight schedules at Chicago's O'Hare International Airport (ORD), New York's John F. Kennedy International Airport (JFK), and Newark Liberty International Airport (EWR) in accordance with the International Air Transport Association (IATA) Worldwide Scheduling Guidelines. The deadline coincides with the schedule submission deadline for the IATA Schedules Conference for the Winter 2011–2012 scheduling season.

DATES: Schedules must be submitted no later than May 19, 2011.

ADDRESSES: Schedules may be submitted by mail to the Slot Administration Office, AGC–200, Office of the Chief Counsel, 800 Independence Ave., SW., Washington, DC 20591; facsimile: 202–267–7277; or by e-mail to: *7-AWA-slotadmin@faa.gov.*

FOR FURTHER INFORMATION CONTACT: Robert Hawks, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone number: 202–267–7143; fax number: 202–267–7971; e-mail: *rob.hawks@faa.gov.*

SUPPLEMENTARY INFORMATION: The FAA has designated ORD as an IATA Level 2, Schedules Facilitated Airport, and JFK and EWR as Level 3, Coordinated Airports. Scheduled operations at JFK and EWR are limited by the FAA

Orders, the extension to which are published in today's **Federal Register**, until the FAA publishes a final Congestion Management Rule for LaGuardia Airport, John F. Kennedy International Airport, and Newark Liberty International Airport (RIN 2120–AJ89).

The FAA is primarily concerned about planned passenger and cargo operations during peak hours but carriers may submit schedule plans for the entire day. At ORD, the peak hours are 7 a.m. to 9 p.m. Central Time (1300–0300 UTC) and at EWR and JFK from 6 a.m. to 11 p.m. Eastern Time (1100–0400 UTC). Carriers should submit schedule information in sufficient detail including, at minimum, the operating carrier, flight number, scheduled time of operation, frequency, and effective dates. IATA standard schedule information format and data elements (Standard Schedules Information Manual) may be used.

The U.S. winter scheduling season for these airports is from October 30, 2011, through March 24, 2012, in recognition of the IATA scheduling season dates. The FAA understands there may be differences in schedule times due to different U.S. daylight saving time dates, and these will be accommodated to the extent possible.

Issued in Washington, DC, on March 28, 2011.

Rebecca B. MacPherson,

Assistant Chief Counsel for Regulations.

[FR Doc. 2011–7844 Filed 4–1–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2011–0023]

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System

Pursuant to Title 49 Code of Federal Regulations (CFR) Part 235 and 49 U.S.C. 20502(a), the following railroad has petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system, as detailed below.

Applicant: Elgin, Joliet and Eastern Railway Company, Mr. Thomas W. Hilliard, Senior Manager S&C Construction, 17641 S. Ashland Avenue, Homewood, Illinois 60430.

The Elgin, Joliet and Eastern Railway Company seeks approval of the proposed modification of the traffic control system on the Leithton Subdivision. The modification consists of the removal of the power-operated derail on Main Track # 1, milepost 3.6, at West Bridge Junction.

The reason given for the proposed change is that the track has been upgraded from a siding to a main track and the derail is no longer needed.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.,* Waiver Petition Docket Number FRA–2011–0023) and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://www.regulations.gov.*

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, 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; Page 19477) or at *http://www.dot.gov/privacy.html.*

Issued in Washington, DC on March 28, 2011.

Robert C. Lauby,

Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2011–7838 Filed 4–1–11; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notification of Petition for Approval; Railroad Safety Program Plan

Although not required, the Federal Railroad Administration (FRA) is providing notice that it has received a petition for approval of a Railroad Safety Program Plan (RSPP) submitted pursuant to Title 49 Code of Federal Regulations (CFR) Part 236, Subpart H. The petition is listed below, including the party seeking approval, and the requisite docket number. FRA is not accepting comments on this RSPP.

Long Island Rail Road

[Docket Number FRA–2011–0026]

The Long Island Railroad (LIRR) submitted a petition for approval of an RSPP. The petition, RSPP and any related documents have been placed in the requisite docket (FRA–2011–0026) and are available for public inspection.

Interested parties are invited to review the RSPP and associated documents at the Department of Transportation's (DOT) Docket Management Facility during regular business hours (9 a.m.–5 p.m.) at 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590. All documents in the public docket are also available for inspection and copying on the Internet at *http://www.regulations.gov*.

Anyone is able to search the electronic form of any written communications received into any of our dockets by the name of the individual submitting the document (or signing the document, 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; Page 19477) or at *http://www.dot.gov/privacy.html*.

Issued in Washington, DC on March 28, 2010.

Robert C. Lauby,

Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2011–7840 Filed 4–1–11; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Research, Technical Assistance and Training Programs: Notice of Final Circular

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of availability of final circular.

SUMMARY: The Federal Transit Administration (FTA) is issuing Circular 6100.1D to provide comprehensive assistance to grantees on guidance on application procedures and project management responsibilities for FTA's National Research Programs.

DATES: The effective date of this circular is May 1, 2011.

ADDRESSES: A copy of the circular and comments and material received from the public, as well as any documents indicated in the preamble as being available in the docket, are part of docket FTA–2010–0034 and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave., SE., West Building Ground Floor, Room W12–140, Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

You may also review the circular, comments, and supporting documents online through the Federal Document Management System (FDMS) at Web site: *http://regulations.gov.* Enter the docket number FTA–2010–0034 in the search field. The FDMS is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the Web site.

This notice does not include the final circular. Electronic versions of the final circular will be posted on *http://regulations.gov* as well as on the FTA Web site *http://www.fta.dot.gov.* Paper copies of the final circular may be obtained by contacting FTA's Administrative Services Help Desk, at 202–366–4865.

FOR FURTHER INFORMATION CONTACT: Bruce Robinson, Office of Research, Demonstration and Innovation, Federal Transit Administration, 1200 New Jersey Ave., SE., East Building, Fourth Floor, Washington, DC 20590, phone: (202) 366–4052, or e-mail, *bruce.robinson@dot.gov;* or Linda Sorkin, Office of Chief Counsel, Federal Transit Administration, 1200 New Jersey Ave., SE., East Building, Fifth Floor, Washington, DC 20590, phone: (202) 366–0959, or e-mail, *linda.sorkin@dot.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Overview

This notice provides a summary of changes to FTA Circular 6100.1D, Research and Technical Assistance Training Program: Application Instructions and Program Management Guidelines addresses comments received in response to FTA's September 30, 2010 **Federal Register** publication announcing the availability of the proposed circular (75 FR 60494). The final Circular 6100.1D supersedes FTA Circular 6100.1C. Readers familiar with the former FTA Circular 6100.1C will notice that FTA is proposing a complete reorganization to make this circular consistent with the style of other circulars FTA has updated. Substantive changes in content are discussed in the chapter-by-chapter analysis.

One commenter responded to the notice of availability, asking for several changes.

The commenter requested that FTA allow the public to review and comment on any changes or updates that will be made to the circular. FTA declined this request, as FTA specified in the Amendments to Circular "FTA reserves the right to update the circular without further notice and comment. The intent of this paragraph that if the revision is a result of other guidance and regulations that have gone through notice and comments we do not need to solicit comments again. Another request was to revise the "Key Person" definition to state that the grantee should provide FTA with prior notice of impending staff changes, rather than requiring FTA's prior approval. FTA declined this request as this provision is required by 49 CFR 19.25(c). "For nonconstruction awards, recipients shall request prior approvals from Federal awarding agencies for (2) changes in a key person specified in the application or award document."

FTA also declined the request to change the "Reporting Requirements" section as the requested modifications to the TEAM system fall outside the scope of this circular. The commenter had requested that FTA modify the TEAM system so that it is not necessary for the Milestone Progress Report to be submitted prior to the Federal Financial Report in order for TEAM to generate a single pdf document including both reports.

Three requests that were suggested by the commenter that were approved in part by FTA included changes to Project Identification, the Final Report and the Disclaimers sections. For the Project Identification section, the commenter suggested that FTA forgo the requirement for a sign on all hardware data, equipment, *etc.* The language for Project Identification was modified to further refine which equipment the requirement applied to as follows: "The recipient understands and agrees that each tangible product resulting from national research program projects shall contain or include an appropriate sign, designation or notification stating that the project has been financed with Federal assistance provided by the DOT/FTA. Unless determined otherwise in writing from the FTA, this requirement applies to all equipment, prototypes, construction, reports, data, software, Internet pages, or any similar items produced in the course of the Grant Agreement or Cooperative Agreement for the project that are part of the project's deliverables visible to the public, or are made available to other research organizations or public transportation providers. Reports must also include the disclaimer described in Chapter IV, subsection 4.g."

The commenter suggested that FTA make available a template or sample cover page in the Final Report section of the circular. FTA modified the section as follows: (3) Final Report to Report Organization, Elements and Style. A technical report documenting project performance and results must be submitted to the project manager at the conclusion of the project or subproject. FTA requires all documentation be Section 508 compliant and meet a high standard of organization and clarity of writing. The report must be organized consistent with the specific publication elements and report style guidelines located at *http://www.fta.dot.gov/research/program_requirements.* Contact the FTA project manager for further information.

The commenter also suggested that FTA include a source for the Standard Form 298 in the Disclaimer section. FTA agree and added the following information to the section "SF 298 is located at: *http://www.fta.dot.gov/documents/SF_298.pdf.*"

A. Chapter I—Introduction and Background

The first four sections of this chapter are a general introduction to FTA that is proposed to be included in all new and revised program circulars for the orientation of readers new to FTA programs. Section 5 of this chapter sets forth definitions of terms appearing in the proposed circular to ensure a common understanding of terms.

B. Chapter II—Program Overview

Sections 1 and 2 describe the statutory authority and nature of the national research programs and activities for which this circular applies. Section 3 clarifies the project management roles and responsibilities of the recipient and FTA. Section 4 describes civil rights requirements, and Section 5 notes that Federal cross-cutting requirements will apply to these projects.

C. Chapter III—Application Instructions

Chapter III describes application instructions including the use of the Web-based Transportation Electronic Award and Management (TEAM system), the development of pre-applications or white papers, the development of formal applications including project budgets and statements of work, and other application requirements. Section 6 states that FTA may request recipients to participate in Peer Review of applications.

D. Chapter IV—Project Administration

Chapter IV describes project administration requirements. Sections 1 and 2 provide an overview of the post award management process, with a brief description of the application process. Section 3 describes project identification requirements on all equipment, hardware, construction, reports, data or any similar items produced in the course of the project. Section 4 describes reporting requirements, clarifying that all recipients must submit quarterly Federal Financial Reports (FFR) and Milestone Progress Reports (MPR) in TEAM and clarifies the development of Quarterly Narrative Reports. Section 4 also updates guidelines on the Final Report and other major technical report development and clarifies the requirements for electronic copies. Section 4 also clarifies that all FTA-sponsored reports, not just the Final Report, must contain an identification notice acknowledging FTA sponsorship. Section 5 clarifies prior approval requirements and procedures for obtaining prior approval. It clarifies prior approval requirements for transfers of financial assistance between cost categories and permits prior approvals to be requested and granted electronically by authorized officials. Section 6 describes project modifications including budget revisions and amendments. Sections 7, 8, and 9 describe recipient responsibilities for equipment, intangible property, and supplies. Section 10 clarifies the recipient's third party procurement responsibilities. Section 11 describes project close-out procedures. Sections 12 and 13 describe suspension and termination procedures. Section 14 describes responsibilities for record retention.

E. Chapter V—Financial Management

Sections 1–6 describe the proper use and management of Federal assistance including internal controls, non-Federal matching share, the applicable Federal cost principles, indirect costs, and program income. Section 7 describes the annual Single Audit requirements and describes when these may be extended to for-profit organizations. Section 8 clarifies payment procedures requiring all recipients to make requests using the Request of Advance or Reimbursement Standard Form 270 (SF–270), as is current practice.

F. Chapter VI—FTA Oversight

Section 1 is a general description of FTA's oversight program. Section 2 describes FTA's Oversight Programs that FTA may undertake. Section 3 describes the types of reviews that may apply to the FTA recipient or its projects. Section 3 describes the peer review process FTA may request recipients to participate in.

G. Appendices

Appendix A lists all FTA circulars.

Appendix B provides an example of a Quarterly Narrative Report.

Appendix C describes requirements for developing a Cost Allocation Plan.

Appendix D provides instructions for submitting the Request of Advance or Reimbursement (SF–270).

Appendix E provides FTA regional and metropolitan contact information.

Appendix F is the Subject and Location index.

Therese McMillan,

Deputy FTA Administrator.

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FEDERAL REGISTER

Vol. 76 Monday,
No. 64 April 4, 2011

Part II

The President

Proclamation 8641—Cesar Chavez Day, 2011

Federal Register
Vol. 76, No. 64
Monday, April 4, 2011

Presidential Documents

Title 3—

The President

Proclamation 8641 of March 30, 2011

Cesar Chavez Day, 2011

By the President of the United States of America

A Proclamation

Our Nation's story of progress is rich with profound struggle and great sacrifice, marked by the selfless acts and fearless leadership of remarkable Americans. A true champion for justice, Cesar Chavez advocated for and won many of the rights and benefits we now enjoy, and his spirit lives on in the hands and hearts of working women and men today. As we celebrate the anniversary of his birth, we honor Cesar Chavez's lasting victories for American workers and his noble methods in achieving them.

Raised in the fields of Arizona and California, Cesar Chavez faced hardship and injustice from a young age. At the time, farm workers toiled in the shadows of society, vulnerable to abuse and exploitation. Families like Chavez's were impoverished; exposed to hazardous working conditions and dangerous pesticides; and often denied clean drinking water, toilets, and other basic necessities.

Cesar Chavez saw the need for change and made a courageous choice to work to improve the lives of his fellow farm workers. Through boycotts and fasts, he led others on a path of nonviolence conceived in careful study of the teachings of St. Francis of Assisi and Mahatma Gandhi, and in the powerful example of Martin Luther King, Jr. He became a community organizer and began his lifelong advocacy to protect and empower people. With quiet leadership and a powerful voice, Cesar founded the United Farm Workers (UFW) with Dolores Huerta, launching one of our Nation's most inspiring social movements.

Cesar Chavez's legacy provides lessons from which all Americans can learn. One person can change the course of a nation and improve the lives of countless individuals. Cesar once said, "Non-violence is not inaction. . . . Non-violence is hard work. It is the willingness to sacrifice. It is the patience to win." From his inspiring accomplishments, we have learned that social justice takes action, selflessness, and commitment. As we face the challenges of our day, let us do so with the hope and determination of Cesar Chavez, echoing the words that were his rallying cry and that continue to inspire so many today, "Sí, se puede" — "Yes, we can."

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim March 31 of each year as Cesar Chavez Day. I call upon all Americans to observe this day with appropriate service, community, and educational programs to honor Cesar Chavez's enduring legacy.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of March, in the year of our Lord two thousand eleven, and of the Independence of the United States of America the two hundred and thirty-fifth.

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H.J. Res. 48/P.L. 112–6
Additional Continuing Appropriations Amendments, 2011 (Mar. 18, 2011; 125 Stat. 23)
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