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WHEN: Tuesday, June 14, 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

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FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1653

Court Orders and Legal Processes Affecting Thrift Savings Plan Accounts

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Final rule.

SUMMARY: The Federal Retirement Thrift Investment Board (Agency) is amending its regulations at 5 CFR part 1653. Based on the Agency's memorandum of understanding and data match program with the Department of Health and Human Services, Administration for Children and Families, Federal Office of Child Support Enforcement (OCSE), as well as a legislative amendment which subjects TSP accounts to orders issued pursuant to the Mandatory Victims Restitution Act (MVRA), the Agency's court order volume has significantly increased and will likely continue to increase significantly.

In order to promote efficiency and equity in light of this current and likely future increase in the Agency's court order workload, the Agency is amending its regulations to shorten the time period in which child support orders and MVRA orders are payable. The amendments clarify that these payments are subject to Federal income tax withholding and that tax withholding cannot be waived. Further, the amendments provide that when payment of a qualifying retirement benefits order is to be made to a participant's current or former spouse, the payee may request to have the payment made as early as 30 days after the date of the TSP decision letter.

The Agency considers these amendments to be procedural in character. As a result, no notice and comment period is required by the Administrative Procedure Act. See 5 U.S.C. 553(b)(A).

DATES: This rule is effective on June 1, 2011.

FOR FURTHER INFORMATION CONTACT: Megan Grumbine at 202–942–1644.

SUPPLEMENTARY INFORMATION: The Agency administers the Thrift Savings Plan (TSP), which was established by the Federal Employees' Retirement System Act of 1986 (FERSA), Public Law 99–335, 100 Stat. 514. The TSP provisions of FERSA are codified, as amended, largely at 5 U.S.C. 8351 and 8401–79. The TSP is a tax-deferred retirement savings plan for Federal civilian employees and members of the uniformed services. The TSP is similar to cash or deferred arrangements established for private-sector employees under section 401(k) of the Internal Revenue Code (26 U.S.C. 401(k)).

As authorized by section 466 of the Social Security Act and 5 U.S.C. 8437(e), the Agency entered into a data-sharing agreement with the Department of Health and Human Services, Administration for Children and Families, Federal Office of Child Support Enforcement (OCSE). As a result of this agreement and two recent data matches, the number of child support orders submitted to the Agency has increased significantly. Year-to-date, the Agency has received more than 7,000 child support orders, which is over thirty-six times the amount the Agency processed in total in 2010. This number is nearly certain to increase even further as several states involved in the data match have yet to submit orders corresponding to matched participant accounts.

Further, in 2009, Congress amended the Agency's statute to provide that TSP accounts are subject to enforcement orders issued pursuant to the Mandatory Victims Restitution Act (MVRA). See 5 U.S.C. 8437(e) as well as Public Law 111–31, The Thrift Savings Plan Enhancement Act of 2009. Pursuant to this authority, the Agency and the Department of Justice are working collaboratively to finalize the process by which TSP accounts may be garnished efficiently—consistent with law and regulation. At this point, the Agency does not have statistics as to the number of MVRA orders it may receive, but it is highly likely that the Agency will receive a significant number of backlogged MVRA orders.

Currently, 5 CFR 1653.5(a)(2) provides that payments of child support orders and similar orders (like MVRA) are generally made 60 days after the date of the TSP decision letter determining the parties' rights in the account. This 60 day period is intended to permit the payee sufficient time to consider decisions about tax withholding, payment by EFT, and transfer options. Though a participant may request an expedited payment, the earliest an expedited payment can be made is 31 days after the date of the TSP decision letter. Given that the Agency is currently processing more than 7,000 child support orders, a 31 to 60 day window for processing child support orders is unduly burdensome, expensive, and inequitable. Indeed, a 31 to 60 day window will likely backlog the Agency's processing of child support orders, thereby increasing the costs of administering the TSP. In addition, a 31 to 60 day window will prevent the Agency from timely processing all child support orders. Consequently, similarly situated child support orders (*i.e.,* orders received by the Agency on the same day) may be treated differently: While some orders may be timely processed, others orders will not be processed for more than 60 days and, as a result, not all participants' accounts will receive equal treatment.

Thus, in order to promote efficiency and equity, the Agency amends its regulations to provide that payments of child support orders and similar orders (like MVRA) are generally payable within 30 days of the date of the TSP decision letter.

Further, the Agency is amending 5 CFR 1653.5(e) to provide that the Agency will withhold Federal income tax from payments for child support orders and similar orders in accordance with Internal Revenue Code section 3405(b) (which provides for 10 percent withholding unless the taxpayer elects no withholding). Paragraph (e) will also provide that a participant cannot elect zero withholding on such payments. Allowing a participant to elect zero withholding would delay the Agency's processing of these payments, thereby causing inefficiency and inequity. Moreover, it is unlikely that a participant would request zero withholding from payments not received by the participant because

withholding on such payments is in a participant's best interest. That is, since the participant will be taxed on the full amount of the payment, it is in the participant's interest that 10 percent of the payment be directed toward satisfying the participant's tax liability.

The Agency considers these amendments to be procedural in character. As a result, no notice and comment period is required by the Administrative Procedure Act (APA). See 5 U.S.C. 553(b)(A). However, if any part of these amendments is held to be substantive in character, the Agency has "good cause," within the meaning of 5 U.S.C. 553(b)(B), to promulgate the amendments without a notice and comment period. Specifically, it would be impracticable for the Agency to comply with the APA's notice and comment period—and hence the Agency has "good cause"—because doing so would preclude the Agency from executing its statutory duties and carrying out its mission. See 5 U.S.C. 553(b).

Pursuant to statute, the Agency's Executive Director and the members of the Board must act "solely in the interest of the [TSP's] participants and beneficiaries" and for the exclusive purpose of providing benefits to participants and their beneficiaries and "defraying reasonable expenses of administering the [TSP]." 5 U.S.C. 8477(b)(1). Currently, the Agency effectively faces an emergency situation by virtue of the fact that it is trying to process more than 7,000 child support orders. If the Agency processes these orders in accordance with the 31 to 60-day time period prescribed in the current version of 5 CFR 1653.5, then the TSP will incur significant administrative expenses. However, these administrative expenses can be greatly defrayed if the Agency amends 5 CFR 1653.5 to reduce processing time to 30 days. Consequently, any meaningful delay in amending 5 CFR 1653.5 could cause the Agency to incur unreasonably large administrative expenses. Thus, the Agency's compliance with the notice and comment period would be impracticable. As a result, no notice and comment period is required. See 5 U.S.C. 553(b).

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation will affect Federal employees and members of the uniformed services who participate in the Thrift Savings Plan. It will also affect their legal dependents.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act.

Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 602, 632, 653, 1501–1571, the effects of this regulation on state, local, and Tribal governments and the private sector have been assessed. This regulation will not compel the expenditure in any one year of $100 million or more by state, local, and Tribal governments, in the aggregate, or by the private sector. Therefore, a statement under section 1532 is not required.

Submission to Congress and the General Accounting Office

Pursuant to 5 U.S.C. 810(a)(1)(A), the Agency submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States before publication of this rule in the **Federal Register**. This rule is not a major rule as defined at 5 U.S.C. 814(2).

List of Subjects in 5 CFR Part 1653

Alimony, Child support, Claims, Government employees, Pensions, Retirement.

Gregory T. Long,

Executive Director, Federal Retirement Thrift Investment Board.

For the reasons stated in the preamble, the Agency amends 5 CFR part 1653 as follows:

PART 1653—COURT ORDERS AND LEGAL PROCESSES AFFECTING THRIFT SAVINGS PLAN ACCOUNTS

■ 1. The authority citation for part 1653 continues to read as follows:

Authority: 5 U.S.C. 8435, 8436(b), 8437(e), 8439(a)(3), 8467, 8474(b)(5), and 8474(c)(1).

■ 2. Amend § 1653.5 paragraphs (a) and (e)(2) to read as follows:

§ 1653.5 Payment.

(a) *Payment date.* Payment pursuant to a qualifying retirement benefits court order will generally be made:

(1) 60 days after the date of the TSP decision letter when the payee is the current or former spouse of the participant. The payee can request to receive the payment sooner than 60 days, but in no event earlier than 30 days after the date of the TSP decision letter, if:

(i) The payee makes a tax withholding election, requests payment by EFT, or requests a transfer of all or a portion of the payment to a traditional IRA or eligible employer plan (the TSP decision letter will provide the forms a payee must use to choose one of these payment options); and

(ii) Either the court order does not make an award to multiple payees or, if it does, each of the multiple payee requests expedited payment.

(2) Within 30 days of the date of the TSP decision letter when the payee is someone other than the current or former spouse of the participant.

* * * * *

(e) * * *

(2) If the payment is made to anyone other than the current or former spouse of the participant, the payment is taxable to the participant and is subject to 10 percent Federal income tax under Internal Revenue Code section 3405(b). The participant cannot elect to change the amount of Federal income tax withholding. The tax withholding will be taken from the payee's entitlement and the gross amount of the payment (i.e., the net payment distributed to the payee plus the amount withheld from the payment for taxes) will be reported to the IRS as income to the participant.

* * * * *

[FR Doc. 2011–13011 Filed 5–25–11; 8:45 am]

BILLING CODE 6760–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 704, 741 and 750

RIN 3133–AD73

Golden Parachute and Indemnification Payments

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: NCUA is issuing a final rule to prohibit, in certain circumstances, a Federally insured credit union (FICU) from making golden parachute and indemnification payments to an institution-affiliated party (IAP). The rule will help safeguard the National Credit Union Share Insurance Fund (NCUSIF) by preventing the wrongful or improper disposition of FICU assets and inhibit unwarranted rewards to IAPs that can contribute to an FICU's troubled condition.

DATES: This rule is effective June 27, 2011.

FOR FURTHER INFORMATION CONTACT: Pamela Yu, Staff Attorney, or Ross Kendall, Special Counsel to the General

Counsel, at the above address, or telephone: (703) 518–6540.

SUPPLEMENTARY INFORMATION:

I. Background

On July 10, 2010, the NCUA Board (Board) issued a Notice of Proposed Rulemaking (proposal or proposed rule) to implement section 206(t) [1] of the Federal Credit Union Act (FCU Act), 12 U.S.C. 1786(t), by adding a new part 750 to NCUA's regulations. 75 FR 47236 (August 5, 2010).

The proposed rule would have prohibited, in certain circumstances, an FICU from making golden parachute and indemnification payments to an IAP. The purpose of the proposal, which tracked closely to existing regulations applying to banks,[2] was to safeguard the NCUSIF by preventing the wrongful or improper disposition of FICU assets and to inhibit rewards to IAPs who may have contributed to an FICU's troubled condition or, in the case of indemnification, are the subject of certain types of administrative enforcement actions brought by the regulator. It was also intended to provide FICUs with greater clarity on the distinction between legitimate employee severance payments and improper golden parachute payments.

General Comments

The public comment period for the proposed rule ended on September 7, 2010. NCUA received comments from eighteen commenters, including two national credit union trade organizations, a national association representing state credit union regulators, seven state credit union leagues, two credit unions, three attorneys or law firms, two credit union service providers (employee compensation/benefits providers), and one individual credit union volunteer. The majority of commenters were generally supportive of the rule, but all disagreed with some aspect of the proposal or offered suggestions on one or more aspects of the proposed rule. Six commenters, however, opposed the proposed rule in full. All of these commenters opposed the rule because they disagreed with the proposed indemnification provisions. One commenter supported the golden parachute provisions but opposed the indemnification provisions. Virtually all commenters who were opposed to the indemnification provisions expressed concern that the proposed provisions would be a deterrent to credit union service and would have a negative impact on the ability of FICUs to attract and maintain qualified volunteers and management personnel. NCUA has carefully reviewed and analyzed the comment letters it received in response to the proposal.

II. Summary of the Final Rule

The final rule applies to all FICUs, including natural person and corporate credit unions. NCUA previously issued a final rule to implement section 206(t) for corporate credit unions on September 24, 2010, as part of a comprehensive rule amending part 704, NCUA's rule governing corporate credit unions. 75 FR 64786 (October 20, 2010); *see also* 74 FR 65210 (Dec. 9, 2009) (publication of the proposed rule). Those provisions, which currently apply only to corporates, are substantially identical to the provisions contained in this final rule. Accordingly, to avoid duplicative sections on the same subject, the Board has determined to delete the indemnification and golden parachute provisions (codified at 12 CFR § 704.20) from the corporate rule. This rulemaking, which applies to corporate as well as natural person credit unions, consolidates the provisions into a single rule.

Summary of Golden Parachute Provisions

The final rule prohibits, with some exceptions, FICUs that are insolvent, in conservatorship, rated composite CAMEL or CRIS 4 or 5, subject to a proceeding to terminate or suspend share insurance, undercapitalized (corporates only) or in an otherwise troubled condition [3] from making golden parachute payments. Golden parachutes are defined in the rule as payments made to an IAP that are contingent on the termination of that person's employment and received when the credit union making the payment is troubled.[4]

The Board recognizes, however, that certain post-employment payments have reasonable business purposes. Accordingly, the final rule includes several "exceptions" to the general prohibition against golden parachutes to allow FICUs to offer, consistent with normal business practice, "bona fide" deferred compensation plans and "nondiscriminatory" severance pay plans. The rule also includes an exception to permit a troubled FICU, with NCUA's prior approval, to hire and agree to pay a golden parachute to competent management to assist in bringing a troubled credit union back to financial health. Additionally, the final rule permits limited golden parachute payments, with prior NCUA approval, in circumstances involving the merger of a troubled FICU and contains a general exception provision to allow an FICU to seek NCUA approval to pay an otherwise prohibited golden parachute.

Summary of Indemnification Provisions

The final rule prohibits FICUs, regardless of their financial condition, from paying or reimbursing an IAP's legal or other professional expenses incurred in an administrative or civil action instituted by NCUA or the appropriate state regulatory authority where the IAP is assessed a civil money penalty, removed from office or is required to cease and desist from an action or take an affirmative action described in section 206 of the FCU Act. 12 U.S.C. 1786. Federal credit unions may indemnify their officials and current and former employees in accordance with 701.33(c) of the NCUA regulations, 12 CFR 701.33(c). That section sets forth authority and restrictions on an FCU providing indemnification of officials and employees "for expenses reasonably incurred in connection with any judicial or administrative proceedings to which they are or may become parties by reason of their performance of their official duties." 12 CFR 701.33(c)(1). Federally insured, state-chartered credit unions look to state law for their general indemnification authority. This part 750 contains restrictions on the ability of all FICUs to provide indemnification payments to credit union officials, but the restrictions apply only in the limited circumstances described in the rule, *i.e.,* in the context of an administrative enforcement action brought by NCUA or the appropriate state regulatory authority. This part would, accordingly, take precedence in that specific instance over broader, generally applicable provisions of § 701.33 or of state law and regulation.

The final rule does permit FICUs to purchase reasonable commercial insurance policies or fidelity bonds. The final rule also allows for partial indemnification in circumstances in which there is a formal and final adjudication or finding in a settlement

[1] In 1990, section 2523 of the Comprehensive Thrift and Bank Fraud Prosecution and Taxpayer Recovery Act of 1990 (Fraud Act) amended the Federal Credit Union Act (FCU Act) by adding section 206(t). Public Law 101–647, 2523 (1990). The Fraud Act is title XXV of the Crime Control Act of 1990, S. 3266, which Congress passed on October 27, 1990 and the President signed into law on November 29, 1990.

[2] *See* 12 CFR part 359.

[3] "Troubled condition" is defined in 12 CFR 701.14(b)(3) and (4).

[4] In this preamble, the term "troubled" is used to refer to any of the triggering events listed in § 750.1(e)(1)(ii) of this final rule.

that the IAP has not violated certain laws or regulations or has not engaged in certain unsafe or unsound practices or breaches of fiduciary duty. In these instances, indemnification would be permitted for only that portion of the legal or professional expenses attributable to the charges for which there has been a finding in favor of the IAP.

FICUs may also advance funds to pay reasonable legal fees and other professional expenses (excluding judgments and penalties) for an IAP's defense of an administrative action under certain circumstances. Specifically, the final rule permits an FICU to advance reasonable legal expenses to an IAP directly if its board of directors, in good faith, makes certain specific findings and the IAP provides a written affirmation and agrees in writing to reimburse the FICU if the administrative action ultimately results in a final order against the IAP.

Application to Existing Employment Contracts

The Board does not intend for the provisions in the rule restricting golden parachute payments to have a retroactive application. Accordingly, the final rule applies to all new employment contracts or arrangements entered into on or after the rule's effective date, as well as to existing contracts or arrangements that are renewed or materially modified in any way on or after the final rule's effective date. The Board adopts a similar construction for indemnification obligations that are specifically addressed in an employment contract. However, to the extent that an FICU's indemnification provisions are reflected in a general policy statement or a bylaw provision with general applicability, the Board takes the view that, following the effective date of the final rule, the policy or bylaw must be interpreted so as to give effect to the rule's prohibitions.

With respect to the golden parachute provisions, the final rule does not apply to contracts already in existence on the rule's effective date that contain reasonable provisions relating to the entitlement of an IAP to a payment that falls within the definition of a golden parachute. Thus, existing employment contracts that were legal when made and negotiated at arm's length will not be affected by the rule. The Board expects FICUs will, at the first opportunity, such as at renewal, renegotiate existing employment contracts to bring them into compliance with the rule. Moreover, on or after the effective date of the final rule, its restrictions are applicable, even in the case of an FICU in a healthy condition that enters into a contract or arrangement for payment of a golden parachute to an IAP. Should that FICU subsequently fall into a troubled condition, the provisions in the rule would apply to the contract and would govern whether or not the payment called for in the contract could be made.

III. Detailed Analysis

A detailed analysis and summary of the specific comments pertaining to the final rule's key provisions follows.

Definitions

Section 750.1 contains definitions applicable to this part. The key definitions are discussed below.

"Bona fide Deferred Compensation Plan or Arrangement"

This definition, which appears in the final rule as § 750.1(c), will permit FICUs to continue to provide deferred compensation plans, including supplemental retirement benefits and nonqualified deferred compensation plans, consistent with normal business practices.

Two commenters suggested that language dealing with this subject (§ 750.1(d)(3)(iii) in the proposed rule) should be clarified. These commenters noted that, while typically nonqualified deferred compensation plans vest if the participant remains employed to a specific date, benefits also vest if, prior to the specified vesting date, the participant dies or becomes disabled; in some plans, involuntary termination without cause may also result in vesting. As proposed, § 750.1(d)(3)(iii) required the IAP to have a vested right "at the time of termination of employment" to payments under the deferred compensation plan. Narrowly interpreted, commenters felt this language could be ambiguous with regard to circumstances where a participant vests in the benefit upon death, disability or involuntary termination without cause. Their concern was whether such an occurrence might trigger the restrictions pertaining to golden parachutes.

The Board agrees that this language should not be interpreted to exclude or limit an IAP who vests by death, disability, or, where applicable, involuntary termination without cause, and notes that proposed § 750.1(f)(2)(iii) specifically excluded "any payment made pursuant to a bona fide deferred compensation plan or arrangement" from the definition of "golden parachute payment." As such, a payment to an IAP who vests in a nonqualified deferred compensation plan by virtue of the provisions in that plan is not a golden parachute payment for the purposes of this rule. Accordingly, the definition for "bona fide deferred compensation plan or arrangement" is adopted in final as proposed. As a technical amendment, the final rule redesignates § 750.1(d) as § 750.1(c).

"Golden Parachute Payment"

Proposed § 750.1(f) defined a "golden parachute payment" as any payment (or agreement to make any payment) to an IAP that is contingent on the termination of that party's employment and received when the FICU making the payment is insolvent, in conservatorship, rated CAMEL 4 or 5, undercapitalized (for corporates), subject to a proceeding to terminate or suspend its share insurance, or in an otherwise troubled condition, as defined in § 701.14(b)(3) and (4).

The proposed golden parachute definition provided exceptions for certain qualified pension or retirement plans under section 401 of the Internal Revenue Code (IRC); employee benefit plans that are permissible under § 701.19; bona fide deferred compensation plans; certain death and disability payments; certain "nondiscriminatory" severance plans; payments required by state law; and payments that the Board has determined permissible under § 750.4. These types of payments would not be considered golden parachute payments for purposes of the rule. The Board adopts § 750.1(f) substantially as proposed, with the exception of a revision pertaining to § 457 plans, as described in more detail below. For purposes of clarification, the Board has also revised the definition of "Benefit Plan" so it is now clear that, to the extent such a plan also exhibits characteristics of a deferred compensation or severance plan, it must meet the more specific requirements (*i.e.,* "bona fide" and "nondiscriminatory," respectively) in the rule that apply before payments under such plans will be permissible. Additionally, the Board has added where applicable references to Corporate Risk Information System (CRIS) ratings, which are the corporate credit union counterpart to CAMEL ratings. Finally, as a technical amendment, § 750.1(f) has been redesignated as § 750.1(e) in the final rule.

One commenter believed each of the triggering events enumerated in proposed § 750.1(f)(1)(ii) is unique and FICUs that are either insolvent, undercapitalized, in conservatorship, rated CAMEL or CRIS 4 or 5, subject to a proceeding to terminate or suspend its

share insurance or in an otherwise troubled condition should not be treated in the same manner for the purposes of the rule. Another commenter believed the phrase "troubled condition" was vague.

The Board notes that the triggering events in proposed § 750.1(f)(1)(ii) are statutorily defined in the FCU Act, except for the "undercapitalized" standard, which is applicable only to corporates. *See* 12 U.S.C. 1786(t)(4)(A)(ii). Moreover, while each is a unique condition, the Board believes each triggering event poses a risk sufficient to warrant safeguards to prevent the improper disposition of FICU assets. The Board also notes that the term "troubled condition" is already defined in § 701.14 of NCUA's regulations, which generally requires newly chartered and troubled credit unions to notify NCUA of any change in official. *See* 12 CFR 701.14(b)(3) and (4). Section 750.1(e)(1)(ii)(C) of the final rule contains a cross-reference to § 701.14; there is no new definition of "troubled condition" created in this rule. The definition of "troubled credit unions" set forth in § 701.14(b)(3) and (4) is not vague: It includes CAMEL and CRIS ratings of 4 and 5 for natural person and corporate credit unions, respectively, as well as credit unions receiving assistance under sections 208 or 216 of the FCU Act. 12 U.S.C. 1788, 1790d.

At least two commenters suggested "457 deferred compensation plans" (457 Plans) should be specifically excluded from the definition of "golden parachute payment". Deferred compensation plans described in section 457 of the IRC are available for certain state and local governments and tax-exempt organizations under IRC 501(c), including Federal credit unions (tax-exempt under IRC 501(c)(1)) and state chartered credit unions (tax-exempt under IRC 501(c)(14)). These 457 Plans, which can be eligible plans under IRC 457(b) or ineligible plans under IRC 457(f), allow employees of sponsoring organizations to defer income into future years, for retirement purposes, thereby reducing current year income taxes.

The Board agrees 457 Plans should be excluded from the golden parachute definition. The definition is intended to permit FICUs to offer reasonable deferred compensation plans that are typical in executive compensation packages for credit union executives. The Board recognizes that credit unions, as tax-exempt organizations, are not able to offer equity-based incentive compensation. Deferred compensation plans, including 457 Plans, are an important tool for credit unions to attract executive talent in a competitive market. Accordingly, the final rule specifically excludes 457 Plans from the definition of "golden parachute payment" in § 750.1(e)(2)(i).

Another commenter asked for clarification that the golden parachute definition is not intended to extend to collateral assignment, split dollar employee benefit plans (CASD Plans).

The Board notes § 750.1(f)(2)(ii) of the proposed rule excluded from the definition of "golden parachute payment" employee benefit plans that are permissible under § 701.19. NCUA's Office of General Counsel has previously stated FCUs may purchase split dollar life insurance for the purpose of funding employee benefit plan obligations under § 701.19. OGC Op. 05–0117 (January 13, 2005); *see also* OGC Op. 06–0924 (January 19, 2007). Split dollar life insurance arrangements can be structured in a number of ways, including an arrangement known as a CASD Plan. In general, under this arrangement, an employee owns the insurance policy, while the credit union pays the premiums. The arrangement is structured as a loan from the credit union to the employee, with the loan secured by the employee's assignment of an interest in the policy. To the extent CASD Plans are consistent with § 701.19, these arrangements are excluded from the golden parachute definition under § 750.1(e)(2)(ii) in the final rule.

"Nondiscriminatory"

Section 750.1(i) of the proposed rule defined "nondiscriminatory" as it relates to severance pay plans or arrangements. Under the proposal, only "nondiscriminatory" severance pay plans or arrangements would qualify as an exception to the prohibition on golden parachute payments. To meet the definition of nondiscriminatory under the final rule, a severance pay plan must apply to all employees of an FICU who meet reasonable and customary eligibility requirements applicable to all employees. Disparities in benefits are only acceptable if based on objective criteria like salary, total compensation, length of service, job grade or classification (with a variance in severance benefits relating to any criterion of plus or minus ten percent). Any group of employees that is designated for a different level of benefits based on objective criteria must consist of not less than 33 percent of all employees.

One commenter suggested a greater variance in severance benefits should be permitted and that the size of employee groups designated for a different level of benefits should be capped.

The Board recognizes that severance plans providing somewhat more generous benefits to higher ranking IAPs are typical in the industry but believes the permitted 10 percent variance and required 33 percent group size are appropriate to meet this objective. The Board believes the final rule strikes a reasonable balance to allow FICUs to provide, if appropriate, severance plans with a modest variance in benefits while ensuring that such disparities are based on objective criteria to avoid unwarranted rewards to IAPs. The Board adopts § 750.1(i) as proposed.

"Prohibited Indemnification Payment"

Under proposed § 750.1(k), a "prohibited indemnification payment" would be defined as any payment or agreement to make any payment by an FICU to an IAP to pay or reimburse such person for any civil money penalty, judgment, or other liability or legal expense resulting from any administrative or civil action by NCUA or the appropriate state regulatory authority. The rule becomes operative if the IAP is, in fact, assessed a civil money penalty, removed from office or required to cease and desist from or take any affirmative action with respect to the credit union. The definition would not include any reasonable payment to purchase commercial insurance policies or fidelity bonds, provided the policy or bond is not used to pay or reimburse an IAP for the amount of a civil money penalty or judgment assessed against the IAP. The proposed definition would also allow partial indemnification in certain circumstances. The Board adopts § 750.1(k) as proposed.

Several commenters suggested that if an IAP is found not to have violated the law or breached his or her fiduciary duty, full indemnification, as opposed to partial indemnification, should be permitted.

If an IAP is charged with a violation of law and a breach of fiduciary duty and is ultimately absolved of all charges, then the IAP will receive full indemnification in such circumstance. The Board interprets these commenters to be suggesting that, if an IAP is found not to have violated the law or breached his or her fiduciary duty but, at the same time, the IAP is found to have engaged in unsafe or unsound practices, the IAP should nevertheless be fully indemnified. The Board disagrees. Permitting full indemnification of an IAP, including legal or professional expenses attributable to charges for which the IAP has been found liable, would be contrary to the spirit and

intent of section 206(t) of the FCU Act. Partial indemnification is an appropriate compromise in circumstances where an IAP is ultimately absolved of some, but not all, charges. Accordingly, the final rule permits payments representing a partial indemnification for legal or professional expenses specifically attributable to charges for which there has been a formal and final adjudication or finding in connection with a settlement that the IAP has not violated certain laws or regulations or has not engaged in certain unsafe or unsound practices or breaches of fiduciary duty. Partial indemnification is not permitted, however, in cases where there is a final prohibition order against the IAP.

One commenter asked for clarification on whether payment by the FICU of the amount of the deductible under an insurance policy would be permissible. The permissibility of a particular deductible payment would depend on the individual policy or bond and the nature of the insurance claim. Under the final rule, proceeds from an insurance policy or bond must not be used to pay or reimburse an IAP for the cost of a civil money penalty or judgment assessed against that IAP. In the same vein, a FICU may not pay any deductible amount to the extent that it would apply to any penalty or judgment against an IAP. However, a FICU may pay a deductible amount that is applied toward legal costs attributable to charges for which the IAP is ultimately found not liable.

Prohibited Golden Parachute Payments

Eight commenters provided specific comments on the provision prohibiting golden parachute payments, proposed in § 750.2. Most of the comments were not opposed to the rule but offered suggestions for improvement.

Several commenters expressed concern that the rule penalizes IAPs regardless of their culpability and suggested golden parachute payments should be permissible to IAPs who were not responsible for causing or contributing to the FICU's troubled condition.

The Board emphasizes that the final rule does not create a blanket prohibition on golden parachute payments. The final rule contains several exceptions to avoid unfairly prohibiting payments to individuals who were not responsible for causing or contributing to the FICU's troubled condition. As discussed in more detail below, a FICU may obtain approval to make or agree to make a golden parachute payment under certain circumstances. Where an IAP is not responsible for causing or contributing to the FICU's troubled condition, an FICU may seek approval from NCUA to pay a golden parachute payment to the IAP under the general exception in § 750.4(a)(1).

Permissible Golden Parachute Payments

Section 750.4 of the proposal included three major exceptions to the general prohibition on golden parachute payments. The exceptions would permit, in certain circumstances, payments that would otherwise satisfy the definition of a prohibited golden parachute payment.

First, the proposal included a general exception to permit golden parachute payments where the Board, with written concurrence of the appropriate state supervisory authority in the case of a state chartered credit union or corporate credit union, determines such a payment is permissible.

Second, the proposal included an exception to allow an FICU in a troubled condition to agree to pay a golden parachute payment in order to hire new management to help bring a troubled FICU back to sound financial health. This exception was intended to ensure an FICU can attract qualified senior management with appropriate expertise to help improve a troubled FICU's financial condition. An FICU would be required to notify and obtain the written permission of the Board, and, if applicable, the concurrence of the state supervisory authority, before employing this exception to commit to or make a golden parachute payment.

Third, the proposed rule included an exception to allow FICUs to offer reasonable severance plan payments in the context of a merger involving a troubled credit union. The merger must be unassisted, that is, without assistance from, and at no cost to, NCUA or the National Credit Union Share Insurance Fund. Reasonable severance arrangements related to an unassisted merger must not exceed twelve months' salary. Additionally, under the proposal, an FICU would be required to obtain the written consent of the Board before making the severance payment.

In applying to the Board for any of the three exceptions discussed above, the FICU would be required to demonstrate that the IAP does not bear any responsibility for the troubled condition of the FICU. Specifically, under the proposal, an FICU must demonstrate that it does not possess, and is not aware of, any information providing a reasonable basis to believe that the IAP:

- Has committed any fraudulent act or omission, breach of trust or fiduciary duty, or insider abuse;
- Is substantially responsible for the insolvency of, the appointment of a conservator or liquidating agent for, or the troubled condition of the FICU; or
- Has violated or conspired to violate any applicable Federal or state law or regulation or certain specified criminal provisions of the United States Code.

Under the proposal, the Board would consider the following factors in determining whether to permit a golden parachute payment:

- Whether, and to what degree, the IAP was in a position of managerial or fiduciary responsibility;
- The length of time the IAP was affiliated with the FICU, and the degree to which the proposed payment represents a reasonable payment for services rendered over the period of employment; and
- Any other factors or circumstances which would indicate that the proposed payment would be contrary to the intent of section 206(t) of the FCU Act.

One commenter stated that, in the case of unassisted mergers, severance package decisions should be left to the surviving credit union's management to decide. This commenter also suggested severance packages of 24 months' pay should be permitted under the rule to more accurately reflect common industry standards.

The Board is not convinced a modification to the proposed exception for severance payments made in connection with unassisted mergers is necessary. While the Board believes it is important to provide an exception for circumstances involving payments made in connection with an unassisted merger involving a troubled credit union, reasonable limits need to be placed on such payments. In the Board's opinion, 12 months' pay is an appropriate severance payment in the event of an unassisted merger.

None of the comment letters specifically addressed the other proposed exceptions. As such, the Board adopts § 750.4, substantially as proposed, in the final rule. Minor technical modifications have been made, however, to provide that requests for permission to make a golden parachute payment under § 750.4 must be submitted to "NCUA" rather than "the Board." Additionally, more detailed filing instructions, further discussed below, are provided in § 750.6 of the final rule to clarify the approval process, including provisions governing the right to appeal an initial adverse decision to the Board.

The Board also emphasizes that some of the general concerns expressed by commenters about the golden parachute provisions should be alleviated by the

exceptions available in § 750.4, particularly the general exception in § 750.4(a)(1).

Prohibited Indemnification Payments

The most prevalent concerns raised by commenters were with regard to the indemnification provisions in the proposed rule. The majority of commenters were either opposed to or concerned about the proposed indemnification provisions. Six commenters opposed the proposed rule in full due to the indemnification provisions. Another eight commenters either opposed one or more aspects of the proposed indemnification provisions, expressed concern with some aspect of the provisions, or offered suggestions on how the rule could be improved or clarified. Four commenters did not provide any comments on the indemnification provisions.

Of the commenters providing specific comment on the proposed indemnification provisions, most expressed concern that the rule would make it difficult, if not impossible, to provide any indemnification to credit union volunteers, thus deterring qualified and experienced individuals from credit union service. Credit union board members serve without pay, on a voluntary basis. Several commenters noted the unique nature of voluntary credit union service, and expressed concern that individuals will be unwilling to serve as board members if they perceive their personal net worth to be at risk because the FICU cannot offer them protection against the potential of personal financial exposure.

The Board does not agree with these commenters. While recognizing that credit unions' voluntary governance structure presents unique recruitment and retention challenges, the scope of the rule is very limited. The indemnification limitations apply only to administrative actions brought by NCUA or appropriate state regulator. Such actions are not only rare, but most often take the form of either a removal action or an action to prohibit an individual from serving on behalf of an insured depository institution in the future. These actions do not typically threaten the individual credit union official with significant exposure to personal liability. Moreover, the Board emphasizes that the rule does not create a blanket prohibition on indemnification payments. Under certain conditions, which are described in more detail below, an FICU may make indemnification available to an IAP unless or until the administrative proceeding or civil action results in civil money penalties, removal or prohibition, or an order against the IAP to cease and desist from or take any affirmative action with respect to the credit union.

Several commenters argued the proposed indemnification provisions may interfere with an IAP's right to counsel. One commenter argued that if IAPs must advance their own legal expenses, they will obtain the most affordable representation, as opposed to the best available representation, in their defense of an administrative action. One commenter suggested that, in prohibiting the advancement of legal expenses, the rule would incentivize IAPs to agree to fines or admit liability in an administrative action to avoid advancing their own personal funds to absolve themselves of the charges brought against them. On the other hand, another commenter stated the rule would be a disincentive to settlement since indemnification payments are prohibited where the settlement provisions are adverse for the IAP. One commenter also suggested NCUA would effectively be depriving IAPs the right of judicial review because indemnification is unavailable following an adverse outcome in an administrative action.

The Board disagrees with these commenters. First, the Board does not agree with the contention that a reasonable limitation on indemnification where an IAP is subject to an adverse final order in an administrative action, such as that proposed, interferes with an IAP's due process rights or is otherwise contrary to public policy. While IAPs may have to use their own funds to pay for or reimburse legal expenses in their defense of an administrative action, IAPs maintain their fundamental right to counsel. Similarly, IAPs maintain their right of judicial review even if indemnification is prohibited. The proposed rule's limitations on indemnification would not disturb an IAP's right to appeal a final administrative order to the U.S. Court of Appeals; furthermore, if the appellate court reversed an administrative order, then the IAP would again be entitled to indemnification. Second, under the proposal an FICU can advance reasonable legal expenses to IAPs directly to assist in defending themselves against administrative actions. While proposed § 750.1(k) defined "prohibited indemnification payment" as any payment for the benefit of an IAP to pay or reimburse such person for, among other things, "any legal expense" resulting from an administrative action, this statement was qualified with the language: "that results in a final order or settlement [against the IAP]". Thus, under the proposal, an indemnification payment would not be prohibited unless and until the administrative action resulted in a final order or settlement pursuant to which the IAP is assessed or agrees to a civil money penalty, removal from office, prohibition from participating in the conduct of the affairs of an insured credit union, or cease and desist from or take an affirmative action described in section 206 of the FCU Act. 12 U.S.C. 1786.

Proposed § 750.5 then described the circumstance when an indemnification payment would be permissible; specifically, where the FICU's board of directors makes a good faith determination, after due investigation, that:

- The IAP acted in good faith and in a manner he or she believed to be in the best interests of the FICU;
- The payment will not materially adversely affect the FICU's safety and soundness;
- The payments do not ultimately become prohibited indemnification payments as defined in § 750.1(k), that is, the administrative action does not ultimately result in a civil money penalty, removal order, or cease and desist order against the IAP; and
- The IAP agrees in writing to reimburse the FICU, to the extent not covered by payments from insurance, for "that portion of the *advanced* indemnification payments, if any, *which subsequently becomes* a prohibited indemnification payment." (Emphasis added).

Read together, the proposed provisions would allow for reasonable indemnification payments and the advancement of legal expenses to assist IAPs in their defense of administrative actions under certain conditions. To alleviate commenters' concerns, however, the Board has elected to make several modifications in § 750.5 of the final rule to clarify the circumstances under which indemnification will be permissible. These modifications are discussed more fully below.

Permissible Indemnification Payments

Several commenters suggested changes or clarifications with regard to proposed § 750.5. As discussed above, a number of commenters expressed concern that the proposal would not permit the advancement of legal funds, essentially depriving an IAP of the right to counsel and otherwise eroding principles of due process.

Additionally, several commenters opposed the requirement that a FICU's board of directors make a "good faith determination" that an indemnification

payment will not ultimately become prohibited. These commenters characterized the requirement as overly subjective, insofar as it involves, in their view, the interpretation of law and facts and places an unrealistic expectation on the FICU board to predict the outcome of an administrative action. Thus, according to these commenters, the determination should not reasonably be required to be made by a FICU board. Some commenters expressed concern that NCUA could second guess the credit union's good faith decision to indemnify an IAP and noted there are no safeguards to preclude NCUA from disagreeing with a board's good faith determination and blocking the indemnification payment. One commenter also disagreed with proposed § 750.5(a)(4), which would require an IAP to agree to reimburse the FICU, to the extent not covered by payments from insurance and bonds, for that portion of the advanced indemnification payments for which the IAP has ultimately been found liable. This commenter argued that such a requirement would essentially render futile the mitigating purpose of the exception.

To both alleviate concerns regarding the advancement of legal expenses and to provide clarification about the "good faith determination" requirement, the Board is modifying § 750.5(a) of the final rule. Under the final rule, an FICU may make or agree to make reasonable indemnification payments to an IAP, including advancing funds to pay or reimburse reasonable legal fees and other professional expenses incurred by an IAP in an administrative proceeding or civil action initiated by NCUA or a state regulatory authority. The decision to approve payment of such funds requires the FICU's board of directors to make a good faith determination, after due consideration, that:

- The IAP acted in good faith and in a manner he or she believed to be consistent with his or her fiduciary duty; [5] and
- The payment will not materially adversely affect the FICU's safety and soundness.

The Board has also determined to clarify that the FICU board of directors' determination as to whether or not an advance is appropriate should take into consideration the ability of the affected IAP to repay the advance if required. This would include, for example, a review of the affected individual's financial circumstances, including whether or not he or she has collateral that might be pledged to secure the repayment obligation. Accordingly, the rule text includes this element as part of the board's due consideration.

The IAP will be required to provide:

- A written affirmation of his or her good faith belief that the IAP acted in manner he or she believed to be consistent with his or her fiduciary duty; and
- A written agreement to reimburse the FICU, to the extent not covered by payments from liability insurance or surety bond, for that portion of the advanced indemnification payment which ultimately becomes a prohibited indemnification payment as defined in § 750.1(k).

An indemnification payment can ultimately become a prohibited indemnification payment because of the entry of a final order or settlement pursuant to which the IAP is assessed a civil money penalty, subject to a prohibition or removal order, or required to cease and desist from or take any affirmative action described in section 206 of the FCU Act. If such a final order or settlement is the result, then the IAP must reimburse the FICU for all legal and professional fees advanced. Moreover, the FICU must not, under any circumstance, agree to reimburse any civil money penalty actually entered against the IAP.

The Board believes the final rule is clear in describing how an FICU may provide for the advancement of legal and other professional expenses in appropriate circumstances. The modifications also provide greater clarification about the conditions under which indemnification payments will be permitted under § 750.5. Further, the added requirement that an IAP provide a written affirmation of a good faith belief that he or she acted in a manner believed to be in the best interests of the members will assist the FICU's board in conducting its own due diligence investigation and determination that the "good faith" standard has been met.

The Board believes the new provisions in § 750.5 are consistent with the spirit and intent of § 206(t) of the FCU Act and effectively balance the interest in allowing for the protection of volunteer officials while preventing the improper use of FICU funds to unjustly reward IAPs who are not deserving of indemnification.

Additionally, as discussed above, for purposes of clarification the final rule makes a generic reference to an IAP's fiduciary duty, rather than referring specifically to a duty to serve the "best interests of the institution." This avoids inconsistency with the NCUA's recent rule outlining the fiduciary duties and responsibilities of Federal credit union directors, (*See,* 12 CFR 701.4), while recognizing that applicable standards governing conduct and duties of IAPs of state chartered institutions are established by state law. *See* footnote 5.

Filing Instructions

Section 750.6 of the final rule is revised to provide greater detail about the procedures for submitting written requests to make excess nondiscriminatory severance plan payments pursuant to § 750.1(e)(2)(v) and golden parachute payments permitted by § 750.4. The final rule clarifies that, in the case of a Federal or state chartered natural person credit union, such written requests must be submitted to the NCUA regional director for the region in which the credit union is located. In the case of a Federal or state chartered corporate credit union, such written requests must be submitted to the Director of the Office of Corporate Credit Unions. Additionally, the final rule clarifies that, in the case of a state chartered natural person or corporate credit union, where written concurrence by the state supervisory authority is required, the requesting party must submit a copy of its written request to the state supervisory authority where the credit union is located.

The Board has also determined, on its own, to add provisions to this section of the rule outlining a process by which a requester may appeal an adverse decision to the Board. The provisions, at new subsection (b), include time frames and procedural considerations and are modeled on the provisions found elsewhere in NCUA's regulations governing the appeal of creditor and share insurance claims. *See* 12 CFR 709, 745, 747.

IV. Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a rule may have on a substantial number of small entities (primarily those under ten million dollars in assets). This rule does not impose any regulatory burden but prohibits improper golden parachute and indemnification payments to IAPs by FICUs in certain circumstances.

[5] Directors of Federal credit unions have a fiduciary duty to act in the best interest of the members. By necessary implication, an FCU's officers and employees, who are under the oversight and direction of the board, have the same obligation. *See* 75 FR 81378 (December 28, 2010); 12 CFR 701.4. Directors and officers of credit unions chartered at the state level should look to applicable standards as contained in state law to determine the scope and extent of their duties. The text of the rule has been clarified to reflect this distinction.

Accordingly, it will not have a significant economic impact on a substantial number of small credit unions, and therefore, no regulatory flexibility analysis is required.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) applies to rulemakings in which an agency by rule creates a new paperwork burden on regulated entities or modifies an existing burden. 44 U.S.C. 3507(d). For purposes of the PRA, a paperwork burden may take the form of a either a reporting or a recordkeeping requirement, both referred to as information collections. Part 750 will impose new information collection requirements. Specifically, § 750.6 will require requests for an FICU to make nondiscriminatory severance plan payments under § 750.1(e)(2)(v) and golden parachute payments permitted by § 750.4 to be submitted in writing to NCUA.

In FY 2009, there were 351 problem FICUs with CAMEL 4 or 5 ratings. Of those, 156 FICUs had less than $10 million in total assets and 117 FICUs had between $10 million and $100 million in total assets. As of year-end 2010, there were 365 CAMEL 4 and 5 FICUs. Of those, 163 had less than $10 million in assets and 130 had total assets between $10 million and $100 million. Smaller FICUs are unlikely to seek NCUA approval to make golden parachute payments because these payments are more typically seen in the executive compensation of larger, more complex FICUs. Of the remaining larger, problem FICUs, NCUA anticipates no more than 20 percent would seek NCUA approval to make a golden parachute payment. Accordingly, NCUA estimates that 15 FICUs will need to solicit NCUA approval in advance of making a severance or golden parachute payment within the scope of the proposed rule and that preparing the request for approval may take four hours: 15 FICUs × 4 hours = 60 hours.

As required by the PRA, NCUA has submitted a copy of this final regulation to the Office of Management and Budget (OMB) for its review and approval.

The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

NCUA has determined that this rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Public Law 105–277, 112 Stat. 2681 (1998).

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) (SBREFA) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the APA. 5 U.S.C. 551. NCUA does not believe this final rule is a "major rule" within the meaning of the relevant sections of SBREFA. NCUA has submitted the rule to the Office of Management and Budget for its determination in that regard.

List of Subjects

12 CFR Part 704

Credit unions, Corporate credit unions, Reporting and recordkeeping requirements.

12 CFR Part 741

Bank deposit insurance, Credit unions, Reporting and recordkeeping requirements.

12 CFR Part 750

Credit Unions, Golden parachute payments, Indemnity payments.

Dated: By the National Credit Union Administration Board, this 19th day of May 2011.

Mary F. Rupp,

Secretary of the Board.

For the reasons discussed above, NCUA amends 12 CFR parts 704 and 741, and adds part 750 of title 12, chapter VII, of the Code of Federal Regulations as follows:

PART 704 —CORPORATE CREDIT UNIONS

■ 1. The authority citation for part 704 continues to read as follows:

Authority: 12 U.S.C. 1766(a), 1781, 1789.

§ 704.20 [Removed]

■ 2. Remove § 704.20.

PART 741—REQUIREMENTS FOR INSURANCE

■ 3. The authority citation for part 741 continues to read as follows:

Authority: 12 U.S.C. 1757, 1766(a), 1781–1790, and 1790d; 31 U.S.C. 3717.

■ 4. Add new § 741.224 to read as follows:

§ 741.224 Golden parachute and indemnification payments.

Any credit union insured pursuant to Title II of the Act must adhere to the requirements stated in part 750 of this chapter.

■ 5. New part 750 is added to read as follows:

PART 750—GOLDEN PARACHUTE AND INDEMINIFICATION PAYMENTS

Sec.

Authority: 12 U.S.C. 1786(t).

§ 750.0 Scope.

(a) This part limits and prohibits, in certain circumstances, the ability of Federally insured credit unions, including Federally and state chartered natural person credit unions and Federally and state chartered corporate credit unions, to enter into contracts to pay and to make golden parachute and indemnification payments to institution-affiliated parties (IAPs).

(b) The limitations on golden parachute payments apply to troubled Federally insured credit unions that seek to enter into contracts to pay or to make golden parachute payments to their IAPs. A "golden parachute payment" is generally considered to be any payment to an IAP which is contingent on the termination of that person's employment and is received when the Federally insured credit union making the payment is troubled. The definition of golden parachute payment does not include payments pursuant to qualified retirement plans, nonqualified bona fide deferred compensation plans, nondiscriminatory severance pay plans, other types of common benefits plans, state statutes and death benefits. Certain limited exceptions to the golden parachute payment prohibition are provided for in cases involving unassisted mergers and the hiring of new management to help improve a troubled Federally insured credit union's financial condition. A procedure is also set forth to permit a Federally insured credit union to request permission to make what would otherwise be a prohibited golden parachute payment.

(c) The limitations on indemnification payments apply to all Federally insured credit unions, including state chartered credit unions, regardless of their financial health. Generally, this part prohibits Federally insured credit unions from indemnifying an IAP for

that portion of the costs sustained with regard to an administrative proceeding or civil action commenced by NCUA or a state regulatory authority that results in a final order or settlement pursuant to which the IAP is assessed a civil money penalty, removed from office, prohibited from participating in the affairs of a Federally insured credit union or required to cease and desist from an action or take an affirmative action described in section 206 of the Federal Credit Union Act, 12 U.S.C. 1786. There are exceptions to this general prohibition. First, a Federally insured credit union may purchase commercial insurance to cover these expenses, except judgments and penalties. Second, the credit union may advance legal and other professional expenses to an IAP directly (except for judgments and penalties) if its board of directors makes certain specific findings and the IAP provides a written affirmation and agrees in writing to reimburse the credit union if it is ultimately determined that the IAP violated a law or regulation or has engaged in certain unsafe or unsound practices or breaches of fiduciary duty. For Federal credit unions, fiduciary duty is defined in 701.4 of this chapter. State chartered credit unions should look to applicable state law.

§ 750.1 Definitions.

As used in this part:

(a) *Act* means the Federal Credit Union Act.

(b) *Benefit plan* means any employee benefit plan, contract, agreement or other arrangement subject to the requirements in § 701.19 of this chapter; provided, however, that to the extent the plan exhibits characteristics of a deferred compensation plan or arrangement, or severance plan, it meets the criteria set forth in paragraph (c) or (i), respectively, of this section.

(c) *Bona fide deferred compensation plan or arrangement* means any plan, contract, agreement or other arrangement where:

(1) An IAP voluntarily elects to defer all or a portion of the reasonable compensation, wages or fees paid for services rendered that otherwise would have been paid to the IAP at the time the services were rendered, including a plan providing for crediting a reasonable investment return on the elective deferrals, and the Federally insured credit union either:

(i) Recognizes compensation expense and accrues a liability for the benefit payments according to generally accepted accounting principles (GAAP); or

(ii) Segregates or otherwise sets aside assets in a trust that may only be used to pay plan and other benefits, except that the assets of the trust may be available to satisfy claims of the Federally insured credit union's creditors in the case of insolvency; or

(2) A Federally insured credit union establishes a nonqualified deferred compensation or supplemental retirement plan, other than an elective deferral plan described in paragraph (c)(1) of this section:

(i) Primarily for the purpose of providing benefits for certain IAPs in excess of the limitations on contributions and benefits imposed by sections 415, 401(a)(17), 402(g) or any other applicable provision of the Internal Revenue Code of 1986 (26 U.S.C. 415, 401(a)(17), 402(g)); or

(ii) Primarily for the purpose of providing supplemental retirement benefits or other deferred compensation for a select group of directors, management or highly compensated employees, excluding severance payments described in paragraph (e)(2)(v) of this section and permissible golden parachute payments described in § 750.4; and

(3) In the case of any nonqualified deferred compensation or supplemental retirement plans as described in paragraphs (c)(1) and (2) of this section, the following requirements apply:

(i) The plan was in effect at least one year before any of the events described in paragraph (e)(1)(ii) of this section;

(ii) Any payment made pursuant to the plan is made in accordance with the terms of the plan as in effect no later than one year before any of the events described in paragraph (e)(1)(ii) of this section and in accordance with any amendments to the plan during that one year period that do not increase the benefits payable under the plan;

(iii) The IAP has a vested right, as defined under the applicable plan document, at the time of termination of employment to payments under the plan;

(iv) Benefits under the plan are accrued each period only for current or prior service rendered to the employer, except that an allowance may be made for service with a predecessor employer;

(v) Any payment made pursuant to the plan is not based on any discretionary acceleration of vesting or accrual of benefits that occurs at any time later than one year before any of the events described in paragraph (e)(1)(ii) of this section;

(vi) The Federally insured credit union has previously recognized compensation expense and accrued a liability for the benefit payments according to GAAP or segregated or otherwise set aside assets in a trust that may only be used to pay plan benefits, except that the assets of the trust may be available to satisfy claims of the credit union's creditors in the case of insolvency; and

(vii) Payments pursuant to the plans must not exceed the accrued liability computed in accordance with GAAP.

(d) *Federally insured credit union* means a Federal credit union, state chartered credit union, or corporate credit union the member accounts of which are insured under the Act.

(e) *Golden parachute payment.*

(1) The term *golden parachute payment* means any payment or any agreement to make any payment in the nature of compensation by any Federally insured credit union for the benefit of any current or former IAP pursuant to an obligation of the credit union that:

(i) Is contingent on, or by its terms is payable on or after, the termination of the party's primary employment or affiliation with the credit union; and

(ii) Is received on or after, or is made in contemplation of, any of the following events:

(A) The insolvency of the Federally insured credit union that is making the payment; or

(B) The appointment of any conservator or liquidating agent for the Federally insured credit union; or

(C) A determination by NCUA or, in the case of a state chartered credit union, the appropriate state supervisory authority that the Federally insured credit union is in a troubled condition, as defined in § 701.14(b)(3) and (4) of this chapter; or

(D) The Federally insured credit union has been assigned:

(1) In the case of a Federal credit union, 4 or 5 CAMEL composite rating by NCUA; or

(2) In the case of a Federally insured state chartered credit union, an equivalent 4 or 5 CAMEL composite rating by the state supervisor; or

(3) In the case of a Federally insured state chartered credit union in a state that does not use the CAMEL system, a 4 or 5 CAMEL composite rating by NCUA based on core workpapers received from the state supervisor; or

(4) In the case of a corporate credit union, the corporate credit union is undercapitalized as defined in § 704.4, or has been assigned a 4 or 5 Corporate Risk Information System (CRIS) rating by NCUA in either the Financial Risk or Risk Management composites, or, in the case of a state chartered corporate credit union, assigned a rating equivalent to a 4 or 5 CRIS rating in either composite

by the state supervisory authority (SSA) or by NCUA, based on core exam work papers received from the SSA (in states not using the CRIS or CAMEL rating systems); or

(E) The Federally insured credit union is subject to a proceeding to terminate or suspend its share insurance; and

(iii) Is payable to an IAP whose employment by or affiliation with a Federally insured credit union is terminated at a time when the Federally insured credit union by which the IAP is employed or with which the IAP is affiliated satisfies any of the conditions enumerated in paragraphs (e)(1)(ii) (A) through (E) of this section, or in contemplation of any of these conditions.

(2) *Exceptions.* The term *golden parachute payment* does not include:

(i) Any payment made pursuant to a deferred compensation plan under section 457 of the Internal Revenue Code of 1986, 26 U.S.C. 457, or a pension or retirement plan that is qualified or is intended within a reasonable period of time to be qualified under section 401 of the Internal Revenue Code of 1986, 26 U.S.C. 401; or

(ii) Any payment made pursuant to a benefit plan as that term is defined in paragraph (b) of this section; or

(iii) Any payment made pursuant to a *bona fide deferred compensation plan or arrangement* as defined in paragraph (c) of this section; or

(iv) Any payment made by reason of death or by reason of termination caused by the disability of an IAP; or

(v) Any payment made pursuant to a nondiscriminatory severance pay plan or arrangement that provides for payment of severance benefits to all eligible employees upon involuntary termination other than for cause, voluntary resignation, or early retirement; provided, however, that no employee will receive any payment that exceeds the base compensation paid to the employee during the twelve months, or a longer period or greater benefit as the NCUA will consent to, immediately preceding termination of employment, resignation or early retirement, and the severance pay plan or arrangement must not or cannot have been adopted or modified to increase the amount or scope of severance benefits at a time when the Federally insured credit union was in a condition specified in paragraph (e)(1)(ii) of this section or in contemplation of that condition without the prior written consent of NCUA; or

(vi) Any severance or similar payment required to be made pursuant to a state statute applicable to all employers within the appropriate jurisdiction, with the exception of employers that may be exempt due to their small number of employees or other similar criteria; or

(vii) Any other payment NCUA determines to be permissible in accordance with § 750.4.

(f) *Institution-affiliated party (IAP)* means any individual meeting the criteria in section 206(r) of the Act, 12 U.S.C. 1786(r).

(g) *Liability or legal expense* means:

(1) Any legal or other professional fees and expenses incurred in connection with any claim, proceeding, or action;

(2) The amount of, and any cost incurred in connection with, any settlement of any claim, proceeding, or action; and

(3) The amount of, and any cost incurred in connection with, any judgment or penalty imposed with respect to any claim, proceeding, or action.

(h) *NCUA* means the National Credit Union Administration.

(i) *Nondiscriminatory* means that the plan, contract or arrangement applies to all employees of a Federally insured credit union who meet reasonable and customary eligibility requirements applicable to all employees, such as minimum length of service requirements. A nondiscriminatory plan, contract or arrangement may provide different benefits based only on objective criteria, such as salary, total compensation, length of service, job grade or classification, applied on a proportionate basis (with a variance in severance benefits relating to any criterion of plus or minus ten percent) to groups of employees consisting of not less than 33% of all employees.

(j) *Payment* means:

(1) Any direct or indirect transfer of any funds or any asset;

(2) Any forgiveness of any debt or other obligation;

(3) The conferring of any benefit; or

(4) Any segregation of any funds or assets, the establishment or funding of any trust or the purchase of or arrangement for any letter of credit or other instrument, for the purpose of making, or pursuant to any agreement to make, any payment on or after the date on which the funds or assets are segregated, or at the time of or after such trust is established or letter of credit or other instrument is made available, without regard to whether the obligation to make such payment is contingent on:

(i) The determination, after such date, of the liability for the payment of such amount; or

(ii) The liquidation, after such date, of the amount of such payment.

(k) *Prohibited indemnification payment.* (1) *Prohibited indemnification payment* means any payment or any agreement or arrangement to make any payment by any Federally insured credit union for the benefit of any person who is or was an IAP of the Federally insured credit union, to pay or reimburse such person for any civil money penalty, judgment, or other liability or legal expense resulting from any administrative or civil action instituted by NCUA or any appropriate state regulatory authority, in the case of a credit union or corporate credit union chartered by a state, that results in a final order or settlement pursuant to which such person:

(i) Is assessed a civil money penalty;

(ii) Is removed from office or prohibited from participating in the conduct of the affairs of the Federally insured credit union; or

(iii) Is required to cease and desist from an action or take any affirmative action described in section 206 of the Act (12 U.S.C.1786) with respect to the credit union.

(2) *Exceptions. Prohibited indemnification payment* does not include any reasonable payment that:

(i) Is used to purchase a commercial insurance policy or fidelity bond, provided that the insurance policy or bond must not be used to pay or reimburse an IAP for the cost of any judgment or civil money penalty assessed against the IAP in an administrative proceeding or civil action commenced by NCUA or the appropriate state supervisory authority, in the case of a credit union or corporate credit union chartered by a state, but may pay any legal or professional expenses incurred in connection with a proceeding or action or the amount of any restitution, to the Federally insured credit union or its conservator or liquidating agent; or

(ii) Represents partial indemnification for legal or professional expenses specifically attributable to particular charges for which there has been a formal and final adjudication or finding in connection with a settlement that the IAP has not violated certain laws or regulations or has not engaged in certain unsafe or unsound practices or breaches of fiduciary duty, unless the administrative action or civil proceeding has resulted in a final prohibition order against the IAP.

(l) *Troubled condition* means any Federally insured credit union that meets the criteria as described in § 701.14(b)(3) and (4) of this chapter, or has been granted assistance described in sections 208 or 216 of the Act.

§ 750.2 Golden parachute payments prohibited.

A Federally insured credit union must not make or agree to make any golden parachute payment, except as permitted by this part.

§ 750.3 Prohibited indemnification payments.

A Federally insured credit union must not make or agree to make any prohibited indemnification payment, except as permitted by this chapter.[1]

§ 750.4 Permissible golden parachute payments.

(a) A Federally insured credit union may agree to make or may make a golden parachute payment if:

(1) NCUA, with written concurrence of the appropriate state supervisory authority in the case of a state chartered credit union or corporate credit union, determines the payment or agreement is permissible; or

(2) An agreement is made in order to hire a person to become an IAP at a time when the Federally insured credit union satisfies or in an effort to prevent it from imminently satisfying any of the criteria in § 750.1(e)(1)(ii), and NCUA, with written concurrence of the appropriate state supervisory authority in the case of a state chartered credit union or corporate credit union, consents in writing to the amount and terms of the golden parachute payment. NCUA's consent will not improve the IAP's position in the event of the insolvency of the credit union since NCUA's consent cannot bind a liquidating agent or affect the provability of claims in liquidation. In the event the credit union is placed into conservatorship or liquidation, the conservator or the liquidating agent will not be obligated to pay the promised golden parachute and the IAP will not be accorded preferential treatment on the basis of any prior approval; or

(3) A payment is made pursuant to an agreement that provides for a reasonable severance payment, not to exceed twelve months' salary, to an IAP in the event of a merger of the Federally insured credit union; provided, however, that a Federally insured credit union must obtain the consent of NCUA before making a payment and this paragraph (a)(3) does not apply to any merger of a Federally insured credit union resulting from an assisted transaction described in section 208 of the Act, 12 U.S.C. 1788, or the Federally insured credit union being placed into conservatorship or liquidation; and

(4) A Federally insured credit union or IAP making a request pursuant to paragraphs (a)(1) through (3) of this section must demonstrate it does not possess and is not aware of any information, evidence, documents or other materials indicating there is a reasonable basis to believe, at the time the payment is proposed to be made, that:

(i) The IAP has committed any fraudulent act or omission, breach of trust or fiduciary duty, or insider abuse with regard to the Federally insured credit union that has had or is likely to have a material adverse effect on the Federally insured credit union;

(ii) The IAP is substantially responsible for the insolvency of, the appointment of a conservator liquidating agent for, or the troubled condition, as defined by § 750.1(l), of the Federally insured credit union;

(iii) The IAP has materially violated any applicable Federal or state law or regulation that has had or is likely to have a material effect on the Federally insured credit union; or

(iv) The IAP has violated or conspired to violate sections 215, 656, 657, 1005, 1006, 1007, 1014, 1032, or 1344 of title 18 of the United States Code, or sections 1341 or 1343 of that title affecting a Federally insured financial institution, as defined in title 18 of the United States Code.

(b) In making a determination under paragraphs (a)(1) through (3) of this section, NCUA may consider:

(1) Whether, and to what degree, the IAP was in a position of managerial or fiduciary responsibility;

(2) The length of time the IAP was affiliated with the Federally insured credit union and the degree to which the proposed payment represents a reasonable payment for services rendered over the period of employment; and

(3) Any other factors or circumstances indicating the proposed payment would be contrary to the intent of section 206(t) of the Act or this part.

§ 750.5 Permissible indemnification payments.

(a) A Federally insured credit union may make or agree to make reasonable indemnification payments to an IAP, including advanced funds to pay or reimburse reasonable legal fees or other professional expenses incurred by an IAP in an administrative proceeding or civil action initiated by NCUA or a state regulatory authority if:

(1) The Federally insured credit union's board of directors, in good faith, determines in writing after due investigation and consideration that:

(i) The IAP acted in good faith and in a manner he or she believed to be consistent with his or her fiduciary duty;

(ii) The advancement or payment of the expenses will not materially adversely affect the credit union's safety and soundness; and

(iii) The IAP has the financial capability or has otherwise made appropriate financial arrangements sufficient to repay the advance if required in accordance with this rule; and

(2) The IAP provides:

(i) A written affirmation of his or her reasonable good faith belief that he or she acted in a manner believed to be consistent with his or her fiduciary duty; and

(ii) An agreement in writing to reimburse the Federally insured credit union, to the extent not covered by payments from insurance or bonds purchased pursuant to § 750.1(k)(2)(i), for that portion of any advanced indemnification payments which ultimately become prohibited indemnification payments as defined in § 750.1(k); and

(3) The indemnification payments do not ultimately constitute prohibited indemnification payments as defined in § 750.1(k).

(b) An IAP seeking indemnification payments must not participate in any way in the board of director's discussion and approval of such payments; however, the IAP may present his or her request to the board and respond to any inquiries from the board concerning his or her involvement in the circumstances giving rise to the administrative proceeding or civil action.

(c) In the event a majority of the members of the board of directors are named as respondents in an administrative proceeding or civil action and request indemnification, the remaining members of the board may authorize independent legal counsel to review the indemnification request and provide the remaining members of the board with a written opinion of counsel as to whether the conditions in paragraph (a)(1) through (3) of this section have been met. If independent legal counsel concludes that the conditions have been met, the remaining members of the board of directors may rely on the opinion in authorizing the requested indemnification.

(d) In the event all of the members of the board of directors are named as respondents in an administrative proceeding or civil action and request indemnification, the board will authorize independent legal counsel to

[1] The provisions in this part 750 control to the extent of any inconsistency with § 701.33 of this chapter.

review the indemnification request and provide the board with a written opinion of counsel as to whether the conditions in paragraph (a)(1) through (3) of this section have been met. If independent legal counsel concludes the conditions have been met, the board of directors may rely on the opinion in authorizing the requested indemnification.

§ 750.6 Filing instructions; appeal.

(a) Requests to make excess nondiscriminatory severance plan payments pursuant to § 750.1(e)(2)(v) and golden parachute payments permitted by § 750.4 must be submitted in writing to NCUA. In the case of a Federal or state chartered natural person credit union, such written requests must be submitted to the NCUA regional director for the region in which the credit union is located. In the case of a Federal or state chartered corporate credit union, such written requests must be submitted to the Director of the Office of Corporate Credit Unions. The request must be in letter form and must contain all relevant factual information as well as the reasons why such approval should be granted. If written concurrence by the state supervisory authority is required, the requesting party must submit a copy of its written request to the state supervisory authority where the credit union is located.

(b) An FICU whose request for approval by NCUA in accordance with paragraph (a) of this section has been denied may file an appeal of that denial with the NCUA Board by following the procedures set out in this paragraph.

(1) The appeal must be in writing and filed with the Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, and must be filed not later than sixty days after the initial determination denying the request.

(2) The Board shall make its determination concerning the appeal based on what is submitted in writing; there shall be no personal appearance before the Board in connection with an appeal under this paragraph.

(3) The Board shall make its determination concerning the appeal within 180 days from the date of its receipt of the appeal. The decision by the Board on appeal shall be provided to the appellant in writing, stating the reasons for the decision, and shall constitute a final agency decision. Failure by the Board to issue a decision on appeal within the 180-day period provided for under this section shall be deemed to be denial of such appeal.

(4) A final determination by the Board is reviewable in accordance with the provisions of chapter 7, title 5, United States Code, by the United States District Court for the Eastern District of Virginia or the U.S. District Court for the Federal judicial district where the FICU's principal place of business is located. Any request for judicial review under this section must be filed within 60 days of the date of the Board's final decision. If any appellant fails to file before the end of the 60-day period, the Board's decision shall be final, and the appellant shall have no further rights or remedies with respect to the request.

§ 750.7 Applicability in the event of liquidation or conservatorship.

The provisions of this part, or any consent or approval granted under the provisions of this part by NCUA, will not in any way bind any liquidating agent or conservator for a failed Federally insured credit union and will not in any way obligate the liquidating agent or conservator to pay any claim or obligation pursuant to any golden parachute, severance, indemnification or other agreement. Claims for employee welfare benefits or other benefits that are contingent, even if otherwise vested, when a liquidating agent or conservator is appointed for any Federally insured credit union, including any contingency for termination of employment, are not provable claims or actual, direct compensatory damage claims against such liquidating agent or conservator. Nothing in this part may be construed to permit the payment of salary or any liability or legal expense of any IAP contrary to 12 U.S.C. 1786(t)(3).

[FR Doc. 2011–12827 Filed 5–25–11; 8:45 am]

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NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 740

RIN 3133–AD83

Accuracy of Advertising and Notice of Insured Status

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The NCUA Board is amending certain provisions of NCUA's official advertising statement rule. Specifically, insured credit unions will be required to include the statement in a greater number of radio and television advertisements, annual reports, and statements of condition required to be published by law. The NCUA Board also is defining the term "advertisement" and clarifying size requirements for the official advertising statement in print materials.

DATES: The rule is effective June 27, 2011. To minimize the costs to credit unions and provide ample opportunity to prepare for the revisions, the mandatory compliance date is January 1, 2012.

FOR FURTHER INFORMATION CONTACT: Frank Kressman, Senior Staff Attorney, Office of General Counsel, at the above address or telephone (703) 518–6540.

SUPPLEMENTARY INFORMATION:

A. Background

Section 740.5 of NCUA's regulations requires each insured credit union to include NCUA's official advertising statement in all of its advertisements, including on its main Internet page. 12 CFR 740.5(a). The official advertising statement is in substance as follows: "This credit union is federally insured by the National Credit Union Administration." Insured credit unions, at their option, may use the short title "Federally insured by NCUA" or a reproduction of NCUA's official sign, as depicted in § 740.4(b), as the official advertising statement. 12 CFR 740.4(b); 12 CFR 740.5(b).

The official advertising statement must be in a size and print that is clearly legible. 12 CFR 740.5(b). If the official sign is used as the official advertising statement, an insured credit union may alter the font size to ensure its legibility as provided in § 740.4(b)(2). 12 CFR 740.4(b)(2); 12 CFR 740.5(b).

As noted in the current rule, however, a number of advertisements need not include the official advertising statement.[1] Among those currently

[1] Exempted advertisements in the current rule include: (1) Statements of condition and reports of condition of an insured credit union which are required to be published by state or federal law or regulation; (2) Credit union supplies such as stationery (except when used for circular letters), envelopes, deposit slips, checks, drafts, signature cards, account passbooks, and noninsurable certificates; (3) Signs or plates in the credit union office or attached to the building or buildings in which the offices are located; (4) Listings in directories; (5) Advertisements not setting forth the name of the insured credit union; (6) Display advertisements in credit union directories, provided the name of the credit union is listed on any page in the directory with a symbol or other descriptive matter indicating it is insured; (7) Joint or group advertisements of credit union services where the names of insured credit unions and noninsured credit unions are listed and form a part of such advertisement; (8) Advertisements by radio that do not exceed thirty (30) seconds in time; (9) Advertisements by television, other than display advertisements, that do not exceed thirty (30) seconds in time; (10) Advertisements that because of their type or character would be impractical to

Continued

exempted advertisements are radio and television advertisements that do not exceed 30 seconds in time. In December 2010, the NCUA Board proposed to rescind these exemptions. 75 FR 82323 (December 30, 2010). In that proposal, NCUA stated that it believes it is important for consumers of those kinds of advertisements to know that the share accounts in the advertising credit union are Federally insured by NCUA. The NCUA Board also stated in the proposal that it believes the benefits to consumers and credit unions of rescinding these exemptions, namely, enhanced consumer confidence and NCUA name recognition, far outweigh the minor inconvenience associated with requiring the inclusion of the official advertising statement.

With respect to print advertisements, the NCUA Board proposed to clarify the requirement that the official advertising statement must be in a size and print that is clearly legible. 12 CFR 740.5(b). NCUA's regulations do not dictate a specific font size be used for the official advertising statement, and NCUA stated it continues to believe this makes sense considering advertisements can range from small magazine advertisements to very large billboard advertisements. The NCUA Board proposed to require, however, that in any particular advertisement, in addition to legibility, the font size for the official advertising statement may be no smaller than the smallest font size used in other portions of the advertisement intended to convey information to the consumer. 75 FR 82323 (December 30, 2010).

Also, the NCUA Board stated in the proposal that it believes an insured credit union's annual report and other statements of condition required to be published by law are significant and a form of advertisement and must include the official advertising statement in a prominent position. Accordingly, the NCUA Board proposed to amend § 740.5 in this regard. *Id.*

In summary, the proposal rescinded three exemptions from the general rule requiring the use of the official advertising statement. Those three included radio and television advertisements that do not exceed 30 seconds in time and annual reports and other statements of condition required to be published by law. All other exemptions in § 740.5(c) remain in place.

Finally, the NCUA Board sought to clarify the advertising statement rule by proposing a definition of the term "advertisement" which had previously never been defined. *Id.* The proposed definition is consistent with that used by the Federal Deposit Insurance Corporation in its official advertising statement rule. 12 CFR part 328.

B. Summary of Comments and Discussion

NCUA received only fourteen comments on the proposal. One commenter fully supported the proposal in its entirety. Thirteen commenters opposed some portion of it. The aspect of the proposal commenters expressed the most concern about is rescinding the exemption from using the official advertising statement for radio and television advertisements that do not exceed 30 seconds. Many commenters noted that radio advertisements are their most cost effective form of advertising and are often 10 seconds or less in duration. Commenters stated that requiring the use of the official advertising statement in such short advertisements would detract from their effectiveness or increase their cost. One commenter added this would also apply to short television advertisements. A number of commenters noted the added expense could cause some credit unions to reduce the number of advertisements they place.

NCUA is sensitive to the needs of credit unions to have access to affordable advertising outlets that effectively broadcast their messages. Accordingly, based on the comments, NCUA is amending the proposed requirement for using the official advertising statement with respect to radio and television advertisements. Specifically, NCUA will require the use of the official advertising statement for all radio and television advertisements 15 seconds in length or longer. In other words, all radio and television advertisements less than 15 seconds in duration are exempt from the requirement to use the official advertising statement. This adjustment, adopted in the final rule, exempts those advertisements commenters consider their most cost effective while still enhancing consumer confidence and NCUA name recognition.

Some commenters stated that if the radio and television advertisement aspect of the proposal is adopted, then NCUA should grandfather advertisements already made. Other commenters more generally asked for an extended compliance date if any aspect of the proposal is adopted. To accommodate these requests, although the effective date of the rule will be 30 days after publication in the **Federal Register**, the mandatory compliance date for this final rule is January 1, 2012. This should suffice to minimize any expense or operational disruptions related to the final rule.

A few commenters opposed having to include the official advertising statement on annual reports and statements of condition as they do not believe these documents are advertisements. Some of these commenters also asked for guidance from NCUA as to where they should place the official advertising statement on these documents. NCUA believes it is appropriate and minimally intrusive to include the statement in these documents. The statement must be legible and placed in a prominent position on the front cover of the document or on the first page readers see if there is no cover page.

With respect to the size requirement proposal for print advertisements, one commenter supported it, and six commenters opposed it stating it would complicate the current standard, reduce the effectiveness of print advertisements, or result in some credit unions placing fewer print ads. NCUA believes the proposed standard is fair, reasonable, and minimally intrusive so as not to confuse consumers or detract from the effectiveness of print ads. NCUA adopts it in the final rule.

Some commenters expressed concern about the proposed definition of the term "advertisement" as too broad. The proposed definition is the same as the current definition of "advertisement" used by the Federal Deposit Insurance Corporation in its official advertising statement rule. 12 CFR part 328. NCUA believes the proposed definition is reasonable and not too broad, and NCUA adopts it in this final rule.

C. Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a regulation may have on a substantial number of small credit unions (those under $10 million in assets). The amendments enhance consumer confidence and do not impose a burden on credit unions. Accordingly, the NCUA has determined and certifies

include the official advertising statement, including but not limited to, promotional items such as calendars, matchbooks, pens, pencils, and key chains; (11) Advertisements that contain a statement to the effect that the credit union is insured by the National Credit Union Administration, or that its accounts and shares or members are insured by the Administration to the maximum insurance amount for each member or shareholder; (12) Advertisements that do not relate to member accounts, including but not limited to advertisements relating to loans by the credit union, safekeeping box business or services, traveler's checks on which the credit union is not primarily liable, and credit life or disability insurance. 12 CFR 740.5(c).

that this rule will not have a significant economic impact on a substantial number of small credit unions within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601–612.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996, Public Law 104–121, provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the Administrative Procedures Act. 5 U.S.C. 551. The Office of Information and Regulatory Affairs, an office within the Office of Management and Budget, has reviewed this rule and determined that, for purposes of SBREFA, this is not a major rule.

Paperwork Reduction Act

This rule does not contain a "collection of information" within the meaning of section 3502(3) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3502(3)) and would not increase paperwork requirements under the Paperwork Reduction Act of 1995 or regulations of the Office of Management and Budget.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. This rule would not have substantial direct effect on the states, on the connection between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this rule does not constitute a policy that has federalism implications for purposes of the executive order.

The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

NCUA has determined that this rule would not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Public Law 105–277, 112 Stat. 2681 (1998).

List of Subjects in 12 CFR Part 740

Advertisements, Credit unions, Signs and symbols.

By the National Credit Union Administration Board on May 19, 2011.

Mary F. Rupp,

Secretary of the Board.

For the reasons discussed above, the NCUA Board amends 12 CFR part 740 as follows:

PART 740—ACCURACY OF ADVERTISING AND NOTICE OF INSURED STATUS

■ 1. The authority citation for part 740 continues to read as follows:

Authority: 12 U.S.C. 1766, 1781, 1785, and 1789.

■ 2. Amend § 740.1 by redesignating current paragraphs (b) and (c) as paragraphs (c) and (d), respectively, and by adding a new paragraph (b) to read as follows:

§ 740.1 Definitions.

* * * * *

(b) *Advertisement* as used in this part means a commercial message, in any medium, that is designed to attract public attention or patronage to a product or business.

* * * * *

■ 3. Amend § 740.5(a) as follows:

■ a. Revise paragraph (a).

■ b. Revise the third sentence of paragraph (b).

■ c. Remove paragraph (c)(1) and redesignate paragraphs (c)(2) through (c)(12) as paragraphs (c)(1) through (c)(11) respectively.

■ d. Revise redesignated paragraphs (c)(7) and (c)(8).

The revisions read as follows:

§ 740.5 Requirements for the official advertising statement.

(a) Each insured credit union must include the official advertising statement, prescribed in paragraph (b) of this section, in all of its advertisements including, but not limited to, annual reports and statements of condition required to be published by law, and on its main Internet page, except as provided in paragraph (c) of this section. For annual reports and statements of condition required to be published by law, an insured credit union must place the official advertising statement in a prominent position on the cover page of such documents or on the first page a reader sees if there is no cover page.

* * * * *

(b) * * * The official advertising statement must be in a size and print that is clearly legible and may be no smaller than the smallest font size used in other portions of the advertisement intended to convey information to the consumer. * * *

* * * * *

(c) * * *

(7) Advertisements by radio that are less than fifteen (15) seconds in time;

(8) Advertisements by television, other than display advertisements, that are less than fifteen (15) seconds in time;

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[FR Doc. 2011–12825 Filed 5–25–11; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM400; Special Conditions No. 25–388A–SC]

Special Conditions: Boeing Model 747–8/–8F Airplanes, Interaction of Systems and Structures

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions amend Special Conditions No. 25–388–SC for the Boeing Model 747–8/–8F airplanes. These special conditions were previously issued July 29, 2009, and became effective September 10, 2009. These special conditions are being amended to include additional criteria addressing the Outboard Aileron Modal Suppression System. The 747–8/–8F will have novel or unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. These design features include their effects on the structural performance. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards. Additional special conditions will be issued for other novel or unusual design features of the 747–8/–8F airplanes.

DATES: *Effective Date:* June 27, 2011.

FOR FURTHER INFORMATION CONTACT: Carl Niedermeyer, FAA, Airframe & Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–2279; e-mail *Carl.Niedermeyer@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

On November 4, 2005, The Boeing Company, P.O. Box 3707, Seattle, WA 98124, applied for an amendment to Type Certificate Number A20WE to include the new Model 747–8 passenger airplane and the new Model 747–8F freighter airplane. The Model 747–8 and the Model 747–8F are derivatives of the 747–400 and the 747–400F, respectively. Both the Model 747–8 and the Model 747–8F are four-engine jet transport airplanes that will have a maximum takeoff weight of 970,000 pounds and new General Electric GEnx –2B67 engines. The Model 747–8 will have two flight crew and the capacity to carry 605 passengers. The Model 747–8F will have two flight crew and a zero passenger capacity, although Boeing has submitted a petition for exemption to allow the carriage of supernumeraries.

These special conditions were originally issued July 29, 2009, and published in the **Federal Register** on August 12, 2009 (74 FR 40479).

Type Certification Basis

Under the provisions of Title 14, Code of Federal Regulations (14 CFR) 21.101, Boeing must show that Model 747–8 and 747–8F airplanes (hereafter referred as 747–8/–8F) meet the applicable provisions of part 25, as amended by Amendments 25–1 through 25–117, except for earlier amendments as agreed upon by the FAA. These regulations will be incorporated into Type Certificate No. A20WE after type certification approval of the 747–8/–8F.

In addition, the certification basis includes other regulations, special conditions and exemptions that are not relevant to these proposed special conditions. Type Certificate No. A20WE will be updated to include a complete description of the certification basis for these model airplanes.

If the Administrator finds that the applicable airworthiness regulations (*i.e.,* 14 CFR part 25) do not contain adequate or appropriate safety standards for the 747–8/–8F because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same or similar novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same or similar novel or unusual design feature, the special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the 747–8/–8F must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

Special conditions, as defined in § 11.19, are issued under § 11.38, and become part of the type certification basis under § 21.101.

Novel or Unusual Design Features

The Boeing Model 747–8/8F is equipped with systems that affect the airplane's structural performance, either directly or as a result of failure or malfunction. That is, the airplane's systems affect how it responds in maneuver and gust conditions, and thereby affect its structural capability. These systems may also affect the aeroelastic stability of the airplane. Such systems represent a novel and unusual feature when compared to the technology envisioned in the current airworthiness standards. A special condition is needed to require consideration of the effects of systems on the structural capability and aeroelastic stability of the airplane, both in the normal and in the failed state.

Discussion

The Boeing 747–8F airplane exhibits an aeroelastic mode of oscillation that is self-excited and does not completely damp out after an external disturbance. The sustained oscillation (also known as a limit cycle oscillation or limit cycle flutter) is caused by an unstable aeroelastic mode that is prevented from becoming a divergent oscillation due to one or more nonlinearities that exist in the airplane.

While the sustained oscillation is not divergent, the FAA considers it to be an aeroelastic instability. Boeing has proposed the addition of an Outboard Aileron Modal Suppression (OAMS) system to the fly-by-wire (FBW) flight control system to reduce, but not eliminate, the amplitude of the sustained oscillation and control the aeroelastic instability.

Section 25.629 requires the airplane to be free of any aeroelastic instability, including flutter. It also requires the airplane to remain flutter free after certain failures. The regulations do not anticipate the use of systems that control flutter modes but do not completely suppress them. The use of the OAMS system is a novel and unusual design feature that the airworthiness standards do not adequately address. The FAA believes such systems can be used to ensure that limit cycle (non-divergent) flutter is kept to safe levels. Therefore, the FAA proposes a special condition that addresses this particular sustained oscillation characteristic and provides the necessary standards that permit the use of such active flutter control systems.

Discussion of Comments

Notice of proposed special conditions No. 25–11–09–SC for Boeing 747–8/–8F airplanes was published in the **Federal Register** on March 16, 2011 (76 FR 14341). The standards in Section A were modified to incorporate the reference to Section C and remove "flutter control systems" from the applicability. Section B was already adopted in Special Conditions 25–388–SC and was included for reference. Comments were invited on the amended Section A and the proposed text of Section C, Outboard Aileron Modal Suppression System. Several comments were received from one commenter.

Concerns With the Philosophy of Controlling Aeroelastic Instability (Flutter) With an Active Control System

The commenter, Leth and Associates, LLC, expressed reservations with the philosophy of controlling an aeroelastic instability (flutter) with an active control system under the current rules and regulations, specifically § 25.629. The commenter's position is that a safety issue is being solved by introducing more risk with the addition of an active suppression system. The commenter also expressed concern that the acceptance of this remedy to a design problem will encourage manufacturers to use a similar approach in solving potentially more onerous design flaws in the future. The commenter acknowledged that active flutter suppression systems may be introduced in advanced designs of the future, and stated that it is incumbent on the regulatory authorities to introduce regulations that clearly address the safety requirement of such systems. The commenter recommended that until these amended rules are in place to address aeroservoelastic systems, it is ill advised to accept *ad hoc* solutions to safety issues by adding more risk. The commenter further recommended that until such time as the rules have been changed, flutter prevention should rely on true and tested methods, using passive means of stabilization. The commenter did not offer any specific changes to the special conditions. However, the commenter suggested issues that should be addressed during future rulemaking.

Although the FAA agrees with many of the statements and sentiments

expressed by the commenter, we believe that the special conditions and the agreed upon means of compliance between the FAA and the applicant, adequately address the commenter's concerns. The FAA does not agree that the acceptance of the use of the OAMS system and the type of sustained oscillation exhibited by the Boeing Model 747–8F need wait until new general rulemaking is completed. Special conditions are a form of rulemaking and are issued when the existing applicable airworthiness standards do not contain adequate or appropriate safety standards because of novel or unusual design features of the product to be type certificated. The phrase "novel or unusual" applies to design features of the product to be certificated when compared to the applicable airworthiness standards. This allows the FAA to make adjustments for individual type certificate projects by developing special conditions where novel or unusual design features are present.

The special conditions addressing the OAMS system and the existence of the limit cycle flutter mode were formulated based on the characteristics observed during flight testing of the 747–8F and Boeing's proposed solution to the problem. The FAA is requiring that the type of sustained oscillation covered by the special conditions must not be a hazard to the airplane nor its occupants with the active system inoperative or failed. This is assured by compliance with the requirements in the special condition.

The FAA is taking a conservative approach to the introduction of active flutter suppression systems on transport category airplanes. At this point in time, the FAA is not prepared to certify active flutter suppression systems that control divergent flutter modes, or limit cycle flutter modes that do not meet the requirements of Section C, paragraphs 2.(a) and 2.(c), of these special conditions with the active system inoperative or failed.

No changes were made as a result of these comments and the special conditions are adopted as proposed.

Applicability

As discussed above, these special conditions are applicable to Boeing Model 747–8/–8F airplanes. Should Boeing apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design features, these special conditions would apply to that model as well under the provisions of § 21.101.

Conclusion

This action affects only certain novel or unusual design features of the Boeing Model 747–8/–8F airplanes. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for this Special Condition is as follows:

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

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following amendment to Special Conditions 25–388–SC is issued as part of the type certification basis for the 747–8/–8F airplanes.

A. General

The Boeing Model 747–8/8F airplanes are equipped with automatic control systems that affect the airplane's structural performance, either directly or as a result of a failure or malfunction. The influence of these systems and their failure conditions must be taken into account when showing compliance with the requirements of Subparts C and D of part 25. Except as provided in Section C of these special conditions, the following criteria must be used for showing compliance with these special conditions for airplanes equipped with flight control systems, autopilots, stability augmentation systems, load alleviation systems, fuel management systems, and other systems that either directly or as a result of failure or malfunction affect structural performance. If these special conditions are used for other systems, it may be necessary to adapt the criteria to the specific system.

1. The criteria defined here only address the direct structural consequences of the system responses and performances and cannot be considered in isolation; however, they should be included in the overall safety evaluation of the airplane. These criteria may in some instances duplicate standards already established for this evaluation. These criteria are only applicable to structural elements whose failure could prevent continued safe flight and landing. Specific criteria that define acceptable limits on handling characteristics or stability requirements when operating in the system degraded or inoperative mode are not provided in these special conditions.

2. Depending on the specific characteristics of the airplane, additional studies may be required that go beyond the criteria provided in these special conditions in order to demonstrate the capability of the airplane to meet other realistic conditions such as alternative gust or maneuver descriptions for an airplane equipped with a load alleviation system.

3. The following definitions are applicable to these special conditions.

(a) *Structural performance:* Capability of the airplane to meet the structural requirements of part 25.

(b) *Flight limitations:* Limitations that can be applied to the airplane flight conditions following an in-flight occurrence and that are included in the airplane flight manual (AFM) (*e.g.,* speed limitations, avoidance of severe weather conditions).

(c) *Operational limitations:* Limitations, including flight limitations that can be applied to the airplane operating conditions before dispatch (*e.g.,* fuel, payload and Master Minimum Equipment List (MMEL) limitations).

(d) *Probabilistic terms:* The probabilistic terms (probable, improbable, extremely improbable) used in these special conditions are the same as those used in § 25.1309.

(e) *Failure condition:* The term failure condition is the same as that used in § 25.1309, however these special conditions apply only to system failure conditions that affect the structural performance of the airplane (*e.g.,* system failure conditions that induce loads, change the response of the airplane to inputs such as gusts or pilot actions, or lower flutter margins). The system failure condition includes consequential or cascading effects resulting from the first failure.

B. Effects of Systems on Structures

1. *General.* The following criteria will be used in determining the influence of a system and its failure conditions on the airplane structural elements.

2. *System fully operative.* With the system fully operative, the following apply:

(a) Limit loads must be derived in all normal operating configurations of the system from all the limit conditions specified in subpart C (or used in lieu of those specified in subpart C), taking into account any special behavior of such a system or associated functions or any effect on the structural performance of the airplane that may occur up to the limit loads. In particular, any significant nonlinearity (rate of displacement of control surface, thresholds or any other system nonlinearities) must be accounted for in a realistic or

conservative way when deriving limit loads from limit conditions.

(b) The airplane must meet the strength requirements of part 25 (*i.e.,* static strength, residual strength), using the specified factors to derive ultimate loads from the limit loads defined above. The effect of nonlinearities must be investigated beyond limit conditions to ensure the behavior of the system presents no anomaly compared to the behavior below limit conditions. However, conditions beyond limit conditions need not be considered when it can be shown that the airplane has design features that will not allow it to exceed those limit conditions.

(c) The airplane must meet the aeroelastic stability requirements of § 25.629.

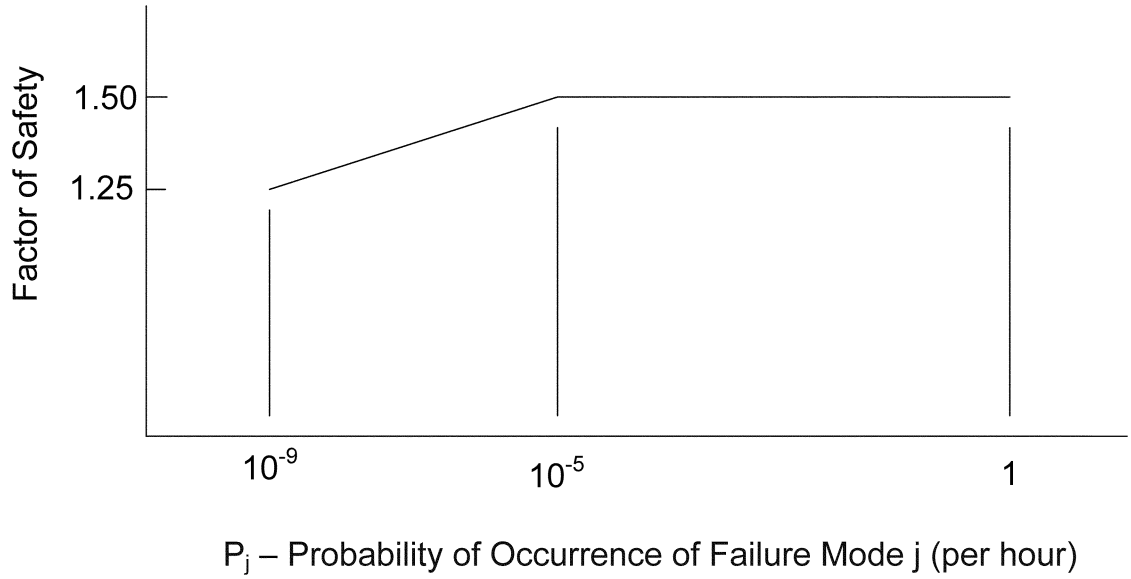
3. *System in the failure condition.* For any system failure condition not shown to be extremely improbable, the following apply:

(a) At the time of occurrence, starting from 1-g level flight conditions, a realistic scenario including pilot corrective actions, must be established to determine the loads occurring at the time of failure and immediately after failure.

(1) For static strength substantiation, these loads multiplied by an appropriate factor of safety that is related to the probability of occurrence of the failure are ultimate loads to be considered for design. The factor of safety (F.S.) is defined in Figure 1.

Figure 1

Factor of Safety at the Time of Occurrence



(2) For residual strength substantiation, the airplane must be able to withstand two thirds of the ultimate loads defined in subparagraph 3(a)(1). For pressurized cabins, these loads must be combined with the normal operating differential pressure.

(3) Freedom from aeroelastic instability must be shown up to the speeds defined in § 25.629(b)(2). For failure conditions that result in speeds beyond V_C/M_C, freedom from aeroelastic instability must be shown to increased speeds, so that the margins intended by § 25.629(b)(2) are maintained.

(4) Failures of the system that result in forced structural vibrations (oscillatory failures) must not produce loads that could result in detrimental deformation of the affected structural elements.

(b) For continuation of flight, for an airplane in the system failed state and considering any appropriate reconfiguration and flight limitations, the following apply:

(1) The loads derived from the following conditions (or used in lieu of the following conditions) at speeds up to V_C/M_C, or the speed limitation prescribed for the remainder of the flight, must be determined:

(i) The limit symmetrical maneuvering conditions specified in § 25.331 and in § 25.345.

(ii) The limit gust and turbulence conditions specified in § 25.341 and in § 25.345.

(iii) The limit rolling conditions specified in § 25.349 and the limit unsymmetrical conditions specified in §§ 25.367 and 25.427(b) and (c).

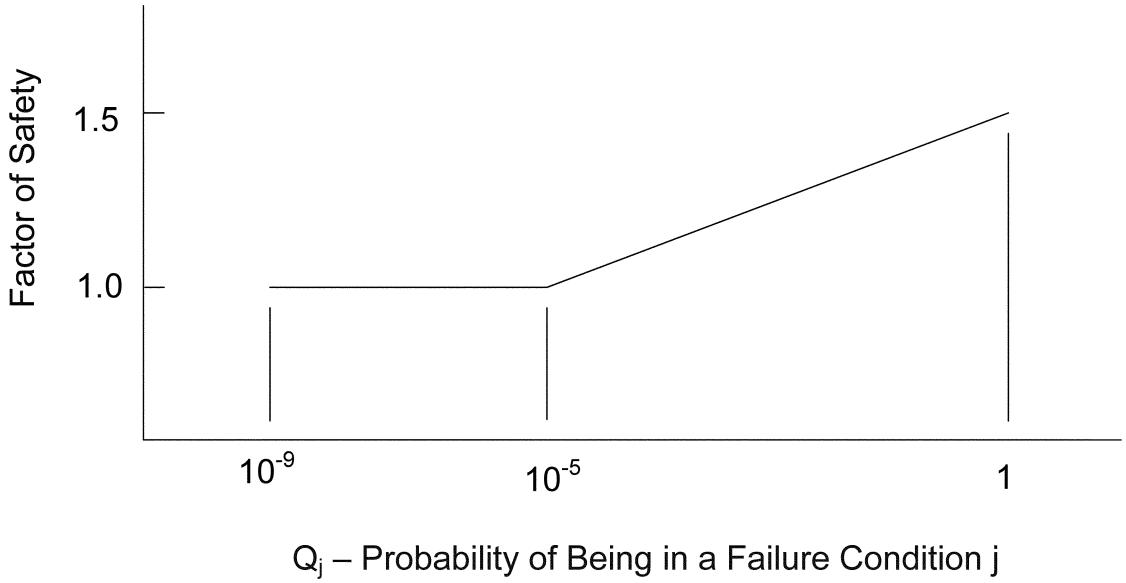
(iv) The limit yaw maneuvering conditions specified in § 25.351.

(v) the limit ground loading conditions specified in §§ 25.473, 25.491 and 25.493.

(2) For static strength substantiation, each part of the structure must be able to withstand the loads in paragraph (3)(b)(1) of the special condition multiplied by a factor of safety depending on the probability of being in this failure state. The factor of safety is defined in Figure 2.

Figure 2

Factor of Safety for Continuation of Flight



$Q_j = (T_j)(P_j)$

Where:

T_j = Average time spent in failure condition j (in hours)

P_j = Probability of occurrence of failure mode j (per hour)

Note: If P_j is greater than 10^{-3} per flight hour then a 1.5 factor of safety must be applied to all limit load conditions specified in Subpart C.

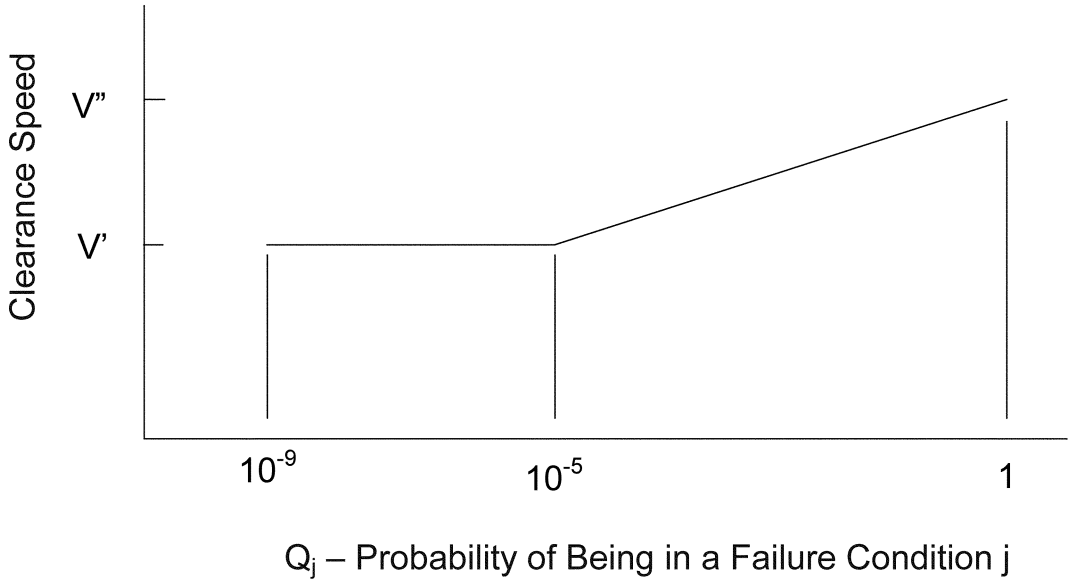
(3) For residual strength substantiation, the airplane must be able to withstand two thirds of the ultimate loads defined in paragraph (3)(b)(1) of the special condition. For pressurized cabins, these loads must be combined with the normal operating differential pressure.

(4) If the loads induced by the failure condition have a significant effect on fatigue or damage tolerance then their effects must be taken into account.

(5) Freedom from aeroelastic instability must be shown up to a speed determined from Figure 3. Flutter clearance speeds V′ and V″ may be based on the speed limitation specified for the remainder of the flight using the margins defined by § 25.629(b).

Figure 3

Clearance Speed



V′ = Clearance speed as defined by § 25.629(b)(2).
V″ = Clearance speed as defined by § 25.629(b)(1).
$Q_j = (T_j)(P_j)$
Where:
T_j = Average time spent in failure condition j (in hours)
P_j = Probability of occurrence of failure mode j (per hour)

Note: If P_j is greater than 10^{-3} per flight hour, then the flutter clearance speed must not be less than V″.

(6) Freedom from aeroelastic instability must also be shown up to V′ in Figure 3 above, for any probable system failure condition combined with any damage required or selected for investigation by § 25.571(b).

(c) Consideration of certain failure conditions may be required by other sections of part 25 regardless of calculated system reliability. Where analysis shows the probability of these failure conditions to be less than 10^{-9}, criteria other than those specified in this paragraph may be used for structural substantiation to show continued safe flight and landing.

4. *Failure indications.* For system failure detection and indication, the following apply:

(a) The system must be checked for failure conditions, not extremely improbable, that degrade the structural capability below the level required by part 25 or significantly reduce the reliability of the remaining system. As far as reasonably practicable, the flight crew must be made aware of these failures before flight. Certain elements of the control system, such as mechanical and hydraulic components, may use special periodic inspections, and electronic components may use daily checks, in lieu of detection and indication systems to achieve the objective of this requirement. These Certification Maintenance Requirements (CMRs) must be limited to components that are not readily detectable by normal detection and indication systems and where service history shows that inspections will provide an adequate level of safety.

(b) The existence of any failure condition, not extremely improbable, during flight that could significantly affect the structural capability of the airplane and for which the associated reduction in airworthiness can be minimized by suitable flight limitations, must be signaled to the flight crew. For example, failure conditions that result in a factor of safety between the airplane strength and the loads of subpart C below 1.25, or flutter margins below V″, must be signaled to the crew during flight.

5. *Dispatch with known failure conditions.* If the airplane is to be dispatched in a known system failure condition that affects structural performance, or affects the reliability of the remaining system to maintain structural performance, then the provisions of these special conditions must be met, including the provisions of paragraph 2 for the dispatched condition, and paragraph 3 for subsequent failures. Expected operational limitations may be taken into account in establishing Pj as the probability of failure occurrence for determining the safety margin in Figure 1. Flight limitations and expected operational limitations may be taken into account in establishing Qj as the combined probability of being in the dispatched failure condition and the subsequent failure condition for the safety margins in Figures 2 and 3. These limitations must be such that the probability of being in this combined failure state and then subsequently encountering limit load conditions is extremely improbable. No reduction in these safety margins is allowed if the subsequent system failure rate is greater than 10^{-3} per hour.

C. Outboard Aileron Modal Suppression System

1. In general, these special conditions apply to fly-by-wire active flutter suppression systems that are intended to operate on a certain type of aeroelastic instability. This type of instability is characterized by a low frequency, self-excited, sustained oscillation of an aeroelastic vibration

mode that is shown to be a stable limit cycle oscillation (LCO), with the system operative and inoperative. (An LCO is considered "stable" if it maintains the same frequency and amplitude for a given excitation input and flight condition.) In addition, the type of sustained oscillation covered by these special conditions must not be a hazard to the airplane nor its occupants with the active system failed. These systems must be shown to reduce the amplitude of the sustained oscillation to acceptable levels and effectively control the aeroelastic instability. Specifically, the following criteria address the existence of such a sustained oscillation on the Boeing Model 747–8/–8F airplanes and the Outboard Aileron Modal Suppression (OAMS) system that will be used to control it.

2. In lieu of the requirements contained in § 25.629, the existence of a sustained, or limit cycle, oscillation that is controlled by an active flight control system is acceptable, provided that the following requirements are met:

(a) OAMS System Inoperative: The sustained, or limit cycle, oscillation must be shown by test and analysis to be stable throughout the nominal aeroelastic stability envelope specified in § 25.629(b)(1) with the OAMS system inoperative. This should include the consideration of disturbances above the sustained amplitude of oscillation.

(b) Nominal Conditions:

(1) With the OAMS system operative it must be shown that the airplane remains safe, stable, and controllable throughout the nominal aeroelastic stability envelope specified in § 25.629(b)(1) by providing adequate suppression of the aeroelastic modes being controlled. All applicable airworthiness and environmental requirements should continue to be complied with. Additionally, loads imposed on the airplane due to any amplitude of oscillation must be shown to have a negligible impact on structure and systems, including wear, fatigue and damage tolerance. The OAMS system must function properly in all environments that may be encountered.

(2) The applicant must establish by test and analysis that the OAMS system can be relied upon to control and limit the sustained amplitude of the oscillation to acceptable levels (per § 25.251) and control the stability of the aeroelastic mode. This should include the consideration of disturbances above the sustained amplitude of oscillation; maneuvering flight, icing conditions; manufacturing variations; Master Minimum Equipment List (MMEL) items; spare engine carriage; engine removed or inoperative ferry flights; and wear, repairs, and modifications throughout the service life of the airplane by:

(i) Analysis to the nominal aeroelastic stability envelope specified in § 25.629(b)(1), and

(ii) Flight flutter test to the V_{DF}/M_{DF} boundary. These tests must demonstrate that the airplane has a proper margin of damping for disturbances above the sustained amplitude of oscillation at all speeds up to V_{DF}/M_{DF}, and that there is no large and rapid reduction in damping as V_{DF}/M_{DF} is approached.

(iii) The structural modes must have adequate stability margins for any OAMS flight control system feedback loop at speeds up to the fail-safe aeroelastic stability envelope specified in § 25.629(b)(2).

(c) Failures, Malfunctions, and Adverse Conditions:

(1) For the OAMS system operative and failed, for any failure, or combination of failures not shown to be extremely improbable, and addressed by §§ 25.629(d), 25.571, 25.631, 25.671, 25.672, 25.901(c) or 25.1309 that results in LCO, it must be established by test or analysis up to the aeroelastic stability envelope specified in § 25.629(b)(2) that the LCO:

(i) Is stable and decays to an acceptable limited amplitude once an external perturbing force is removed;

(ii) Does not result in loads that would cause static, dynamic, or fatigue failure of structure during the expected exposure period;

(iii) Does not result in repeated loads that would cause an additional failure due to wear during the expected exposure period that precludes safe flight and landing;

(iv) Has, if necessary, sufficient indication of OAMS failure(s) and crew procedures to properly address the failure(s);

(v) Does not result in a vibration condition on the flight deck that is severe enough to interfere with control of the airplane, ability of the crew to read the flight instruments, perform vital functions like reading and accomplishing checklist procedures, or to cause excessive fatigue to the crew;

(vi) Does not result in adverse effects on the flight control system or on airplane stability, controllability, or handling characteristics (including airplane-pilot coupling (APC) per § 25.143) that would prevent safe flight and landing; and

(vii) does not interfere with the flight crew's ability to correctly distinguish vibration from buffeting associated with the recognition of stalls or high speed buffet.

(2) The applicant must show that particular risks such as engine failure, uncontained engine, or APU rotor burst, or other failures not shown to be extremely improbable, will not adversely or significantly change the aeroelastic stability characteristics of the airplane.

(3) No MMEL dispatch is allowed with the OAMS system inoperative.

Issued in Renton, Washington, on May 20, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–13022 Filed 5–25–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0994; Directorate Identifier 2009–NE–39–AD; Amendment 39–16707; AD 2011–11–08]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc (RR) RB211–535 Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

There have been several findings of cracking at the firtrees of LP Turbine discs. Fatigue crack initiation and subsequent crack propagation at the firtree may result in multiple LP Turbine blade release. The latter may potentially be beyond the containment capabilities of the engine casings. Thus, cracking at the firtrees of LP Turbine discs constitutes a potentially unsafe condition.

We are issuing this AD to detect cracks in the low-pressure (LP) turbine stage 1, 2, and 3 discs, which could result in an uncontained release of LP turbine blades and damage to the airplane.

DATES: This AD becomes effective June 30, 2011.

ADDRESSES: The Docket Operations office is located at Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground

Floor, Room W12–140, Washington, DC 20590–0001.

FOR FURTHER INFORMATION CONTACT: Frederick Zink, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *frederick.zink@faa.gov;* telephone (781) 238–7779; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on October 5, 2010 (75 FR 61361). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> There have been several findings of cracking at the firtrees of LP Turbine discs. Fatigue crack initiation and subsequent crack propagation at the firtree may result in multiple LP Turbine blade release. The latter may potentially be beyond the containment capabilities of the engine casings. Thus, cracking at the firtrees of LP Turbine discs constitutes a potentially unsafe condition.
>
> Therefore this Airworthiness Directive requires a change to the inspection intervals of LP Turbine Discs.

Comments

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

Request To Change Related Information Paragraph

One commenter, Rolls-Royce plc asked us to use a different statement for Rolls-Royce contact information in paragraph (i) of the proposed AD. Rolls-Royce is concerned that responses to requests for information will be delayed if the statement is not clear on how to request information on service bulletins.

We partially agree. Paragraph (i) is now paragraph (j) of this AD, and we have changed paragraph (j) of the AD to supply the relevant contact information.

Support for the Proposed AD as Written

Two commenters, Continental Airlines and The Boeing Company support the proposed AD as written.

Request To Change the Definition of a Shop Visit

Three commenters, FedEx, American Airlines, and Rolls-Royce plc asked us to change the definition of a shop visit to the definition in the Rolls-Royce Alert Service Bulletin (ASB) RB.211–72–AG272,"at every engine refurbishment and at every 04 and 05 Module Level 3 (Refurbishment) or Level 4 (Overhaul) shop visit." The commenters believed that the proposed AD definition of a shop visit is too conservative and will result in unnecessarily increased costs without a significant improvement in safety.

We partially agree. We agree that the current definition in the proposed AD is too broad because inspecting the LP turbine disks every time an unrelated major flange is separated is not required. We disagree with using the definition in the service bulletin because the service bulletin definition is not sufficient for our needs. We changed paragraph (f) of the proposed AD to "For the purpose of this AD, an "engine shop visit" is the induction of an engine into the shop for maintenance involving the separation of the intermediate-pressure/low-pressure (IP/LP) turbine module from the engine, separation of the IP turbine case from the combustion outer case, or separation of the LP turbine case from the IP turbine case, except that the separation of engine flanges solely for the purposes of transportation without subsequent engine maintenance does not constitute an engine shop visit."

Request To Clarify the Compliance Time

One commenter, American Airlines, asked us to clarify the compliance time in paragraph (e)(1) of the proposed AD to state that for engines currently in the shop on the effective date of the AD, the initial inspection is to be carried out if the affected parts are exposed and rebuild has not yet started. The commenter believed that the proposed AD is unclear as to whether engines which have begun their shop visits prior to the effective date of the AD are required to undergo the initial inspection before re-introduction into service.

We agree. Engines currently in the shop at piece part exposure or in a condition prior to, must comply with the AD before any approval for return to service. Engines built up beyond this point will not require compliance with the AD until the next piece part exposure. Engines that are in the shop and have been approved for return to service are considered not to be in the shop. We changed paragraph (f) of the proposed AD to clarify a shop visit.

Request To Change the Initial Inspection Requirements

One commenter, American Airlines, asked us to change the initial inspection requirements in paragraph (e)(1) of the proposed AD to specify "paragraphs 3.C through 3.E." in ASB RR.211–72–AG272, instead of "Section 3." The commenter believed that only Section 3.C. through 3.E. address the unsafe condition.

We partially agree. The ASB we reference in paragraph (e)(1) of the proposed AD is not incorporated by reference, so requiring operators to follow specific paragraphs in the ASB is unnecessary. We agree, however, that including the reference may induce confusion. We deleted the reference from the proposed AD.

Request To Change the Costs of Compliance

One commenter, American Airlines, asked us to change the Costs of Compliance Section of the proposed AD. American Airlines stated the number of 90 products installed on U.S. registered airplanes and the number of work-hours for performing the inspections are incorrect. American Airlines stated that they operate more RB211–535 engines than the number listed in the proposed AD. American Airlines also stated that ASB RB.211–72–AG272 lists the total hour for accomplishing the required actions as 70 work-hours. American Airlines requests that the AD reflect the work-hours required as 70 work-hours if limited to refurbishment shop visits. If non-refurbishment shop visits are included, American Airlines estimates the average work-hours at 1,300 hours per shop visit.

We partially agree. As of July 9, 2010, 588 installed engines were on U.S. registered airplanes. We changed the Costs of Compliance Section from "90 products of U.S. registry" to "588 products of U.S. registry." We also changed the "cost of the AD on U.S. operators" from $229,500 to $1,499,400.

We don't agree with the request to change the time to comply if performed during non-refurbishment shop visits. We base the number of hours in the cost estimate on performing the inspection during the next shop visit as defined in this AD. We made no change to the AD.

Conclusion

We reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We determined that these changes will not increase the scope of the AD.

Costs of Compliance

Based on the service information, we estimate that this AD would affect about 588 products installed on airplanes of U.S. registry. We also estimate that it would take about 30 work-hours per product to comply with this AD. The average labor rate is $85 per work-hour.

Required parts would cost about $0 per product. Based on these figures, we estimate the cost of the AD on U.S. operators to be $1,499,400.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2011–11–08 Rolls-Royce plc: Amendment 39–16707. Docket No. FAA–2010–0994; Directorate Identifier 2009–NE–39–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective June 30, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Rolls-Royce plc RB211–535E4–37, –535E4–B–37, –535E4–B–75, and –535E4–C–37 turbofan engines. These engines are installed on, but not limited to, Boeing 757–200 series, –200PF series, –200CB series, and –300 series airplanes and Tupolev Tu204 series airplanes.

Reason

(d) This AD results from several findings of cracking at the firtrees of low-pressure (LP) turbine discs. Fatigue crack initiation and subsequent crack propagation at the firtree may result in multiple LP turbine blade release. We are issuing this AD to detect cracks in the LP turbine stage 1, 2, and 3 discs, which could result in an uncontained release of LP turbine blades and damage to the airplane.

Actions and Compliance

(e) Unless already done, do the following actions.

Initial Inspection Requirements

(1) At the next engine shop visit after the effective date of this AD, perform a visual and a fluorescent penetrant inspection (FPI) of the LP turbine stage 1, 2, and 3 disc.

Repeat Inspection Requirements

(2) At each engine shop visit after accumulating 1,500 cycles since the last inspection of the LP turbine stage 1, 2 and 3 discs, repeat the inspections specified in paragraph (e)(1) of this AD.

Remove Cracked Discs

(3) If you find cracks, remove the disc from service.

Definitions

(f) For the purpose of this AD, an "engine shop visit" is:

(1) Induction of an engine into the shop for maintenance involving the separation of the intermediate-pressure/low-pressure (IP/LP) turbine module from the engine, or

(2) Separation of the IP turbine case from the combustion outer case, or

(3) Separation of the LP turbine case from the IP turbine case, except that the separation of engine flanges solely for the purposes of transportation without subsequent engine maintenance does not constitute an engine shop visit.

(g) Engines that have been approved for return to service but are still physically in the shop are not considered to be in the shop.

FAA AD Differences

(h) This AD differs from the Mandatory Continuing Airworthiness Information (MCAI) and or service information as follows in that while the MCAI compliance requires action at a current shop visit, this AD requires compliance at the next shop visit after the effective date of this AD.

Other FAA AD Provisions

(i) *Alternative Methods of Compliance (AMOCs):* The Manager, Engine Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

Related Information

(j) Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2009–0244, dated November 9, 2009, and Rolls-Royce plc Alert Service Bulletin No. RB.211–72–AG272 for related information. Contact Rolls-Royce plc., P.O. Box 31, Derby, DE24 8BJ, United Kingdom; phone: 011 44 1332 242424, fax: 011 44 1332 249936; or e-mail from:*http://www.rollsroyce.com/contact/civil_team.jsp,* for a copy of this service information or download the publication from *https://www.aeromanager.com.*

(k) Contact Frederick Zink, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *frederick.zink@faa.gov;* telephone (781) 238–7779; fax (781) 238–7199, for more information about this AD.

Material Incorporated by Reference

(l) None.

Issued in Burlington, Massachusetts, on May 20, 2011.

Peter A. White,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2011–13014 Filed 5–25–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–1241; Airspace Docket No. 10–AWP–22]

Amendment of Class D and E Airspace; Palmdale, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class D Airspace and Class E Airspace at Palmdale, CA, to accommodate aircraft using Instrument Landing System (ILS) Localizer (LOC) standard instrument approach procedures at Palmdale Regional Airport/USAF Plant 42. This improves the safety and management of Instrument Flight Rules (IFR) operations at the airport. This action also corrects the name of the airport.

DATES: Effective date, 0901 UTC, August 25, 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 March 21, 2011, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend controlled airspace at Palmdale, CA (76 FR 15231). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class D and Class E Airspace designations are published in paragraph 5000, 6004 and 6005, respectively, 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 D Airspace and the Class E Airspace designations listed in this document will be published subsequently in that Order. Except for editorial changes, this rule is the same as published in the notice of proposed rulemaking March 21, 2011.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by modifying Class D Airspace, Class E Airspace designated as an extension to a Class D surface area, and Class E Airspace extending upward from 700 feet above the surface, at Palmdale Regional Airport/USAF Plant 42, Palmdale, CA, to accommodate IFR aircraft using the ILS LOC standard instrument approach procedures at the airport. This action is necessary for the safety and management of IFR operations. This action also corrects the airport name from Palmdale Production Flight/Test Installation Air Force Plant Number 42 Airport, to Palmdale Regional Airport/USAF Plant 42.

The FAA has determined this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, section 106 discusses the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes additional controlled airspace at Palmdale Regional Airport/USAF Plant 42, Palmdale, CA.

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 5000 Class D Airspace.

* * * * *

AWP CA D Palmdale, CA [Amended]

Palmdale Regional Airport/USAF Plant 42
(Lat. 34°37′46″ N., long. 118°05′04″ W.)

That airspace extending upward from the surface to and including 5,000 feet MSL within a 4.3-mile radius of Palmdale Regional Airport/USAF Plant 42. This Class D Airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Paragraph 6004 Class E airspace designated as an extension to a Class D surface area.

* * * * *

AWP CA E4 Palmdale, CA [Amended]

Palmdale Regional Airport/USAF Plant 42
(Lat. 34°37′46″ N., long. 118°05′04″ W.)
Palmdale VORTAC
(Lat. 34°37′53″ N., long. 118°03′50″ W.)

That airspace extending upward from the surface within 2.6 miles each side of the ILS localizer east course, extending from the 4.3-mile radius of Palmdale Regional Airport/USAF Plant 42 to 6.5 miles east of the LOM, and within 1.8 miles south of and parallel to the Palmdale VORTAC 099° radial extending from the 4.3-mile radius of the airport to 7 miles east of the VORTAC. This Class E Airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

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

* * * * *

AWP CA E5 Palmdale, CA [Modified]

Palmdale Regional Airport/USAF Plant 42
(Lat. 34°37′46″ N., long. 118°05′04″ W.)
Palmdale VORTAC
(Lat. 34°37′53″ N., long. 118°03′50″ W.)
Lancaster, Gen. William J. Fox Airfield, CA
(Lat. 34°44′ 28″ N., long. 118°13′ 07″ W.)

That airspace extending upward from 700 feet above the surface within 1.8 miles south

and 6.1 miles north of the Palmdale VORTAC 298° radial extending from the VORTAC to 15.6 miles northwest, and within 1.8 miles each side of the 310° bearing from the Gen. William J. Fox Airfield extending from a 4-mile radius of Gen. William J. Fox Airfield to 9.1 miles northwest of the Airfield, and within 5.2 miles south and 10.4 miles north of the Palmdale VORTAC 298° and 118° radials extending from 9.6 miles northwest to 11.3 miles southeast of the VORTAC, and within 8 miles south and 4 miles north of the 086° bearing from Palmdale Regional Airport/USAF Plant 42 extending 21.7 miles east of Palmdale Regional Airport/USAF Plant 42. That airspace extending upward from 1,200 feet above the surface bounded by a line beginning at lat. 35°36′30″ N., long. 118°45′03″ W.; to lat. 35°44′00″ N., long. 117°53′03″ W.; to lat. 36°07′00″ N., long. 117°53′03″ W.; to lat. 36°07′00″ N., long. 117°35′03″ W.; to lat. 35°47′46″ N., long. 116°55′23″ W.; to lat. 35°21′36″ N., long. 116°55′23″ W.; to lat. 35°34′30″ N., long. 116°29′43″ W.; to lat. 35°34′30″ N., long. 116°23′33″ W.; to lat. 35°28′35″ N., long. 116°18′48″ W.; to lat. 35°21′30″ N., long. 116°13′03″ W.; to lat. 34°43′00″ N., long. 116°13′03″ W.; thence west along lat. 34°43′00″ N., to the southeast boundary of V–21, thence along the southeast boundary of V–21 to lat. 34°30′00″ N., thence west along lat. 34°30′00″ N., to long. 118°20′03″ W.; thence north along long. 118°20′03″ W., to the south boundary of V–137, thence west along the south boundary of V–137 to long. 118°45′03″ W.; thence to the point of beginning.

Issued in Seattle, Washington, on May 17, 2011.

Christine Mellon,

Acting Manager, Operations Support Group, Western Service Center.

[FR Doc. 2011–12991 Filed 5–25–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0949; Airspace Docket No. 10–ASO–34]

Amendment of Class E Airspace; Brunswick Malcolm-McKinnon Airport, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace at Brunswick, GA. The McKinnon Non-Directional Beacon (NDB) has been decommissioned and new Standard Instrument Approach Procedures (SIAPs) have been developed for Malcolm-McKinnon Airport. The geographic coordinates for the airport are adjusted. Also, reference to the Glynco Jetport in the airspace designation is removed. This action enhances the safety and airspace management of Instrument Flight Rules (IFR) operations at the airport.

DATES: Effective 0901 UTC, August 25, 2011. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments

FOR FURTHER INFORMATION CONTACT: Richard Horrocks, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5588.

SUPPLEMENTARY INFORMATION:

History

On November 16, 2010, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E surface airspace at Brunswick, GA (75 FR 69905) Docket No. FAA–2010–0949. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designated as surface areas are published in Paragraph 6002 of FAA Order 7400.9U dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 amends Class E surface airspace to support new SIAPs developed at Malcolm-McKinnon Airport, Brunswick, GA. Airspace reconfiguration is necessary due to the decommissioning of the McKinnon NDB and cancellation of the NDB approach, and for continued safety and management of IFR operations at the airport. This action also updates the geographic coordinates of the airport to coincide with the FAA's aeronautical database, and reference to the Glenco Jetport is removed from the airspace designation as the Jetport is listed separately in the Order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. 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. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of 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 Class E airspace at Brunswick, GA.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 6002 Class E airspace designated as surface areas.

* * * * *

ASO GA E2 Brunswick Malcolm-McKinnon Airport, GA [AMENDED]

Brunswick Malcolm-McKinnon Airport, GA

(Lat. 31°09′07″ N., long. 81°23′29″ W.)

That airspace extending upward from the surface within a 4.1-mile radius of the Brunswick Malcolm-McKinnon Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Issued in College Park, Georgia, on May 4, 2011.

Mark D. Ward,

Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2011–12846 Filed 5–25–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0160; Airspace Docket No. 11–AEA–05]

Establishment of Class E Airspace; Kenbridge, VA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Kenbridge, VA, to accommodate new Standard Instrument Approach Procedures that have been developed for Lunenburg County Airport. This action enhances the safety and management of Instrument Flight Rules (IFR) operations at the Airport.

DATES: Effective 0901 UTC, August 25, 2011. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments

FOR FURTHER INFORMATION CONTACT: Richard Horrocks, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5588.

SUPPLEMENTARY INFORMATION:

History

On March 18, 2011, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E airspace 700 feet above the surface, at Kenbridge, VA (75 FR 14823) Docket No. FAA–2011–0160. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9U dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 amends Class E airspace extending upward from 700 feet above the surface to support new standard instrument approach procedures developed at Lunenburg County Airport, Kenbridge, VA. This will enhance the safety and management of IFR operations at the airport.

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, is non-controversial and unlikely to result in adverse or negative comments. 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. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes Class E airspace at Lunenburg County Airport, Kenbridge, VA.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal AviationAdministration Order 7400.9U, Airspace Designations and Reporting Points, dated August 18, 2010, 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.

* * * * *

AEA VA E5 Kenbridge, VA [NEW]

Lunenburg County Airport, VA
(Lat. 36°57′37″ N., long. 78°11′06″ W.)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of the Lunenburg County Airport and within 4 miles each side of the 024° bearing from the airport extending from the 6.8 mile radius to 8.8 miles NE of the airport and within 4 miles each side of the 204° bearing extending from the 6.8 mile radius to 10 miles southwest of the airport.

Issued in College Park, Georgia, on May 4, 2011.

Mark D. Ward,

Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2011–12858 Filed 5–25–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30783; Amdt. No. 3426]

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 May 26, 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 May 26, 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 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 May 13, 2011.

Ray Towles,

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 30 JUN 2011

Seward, AK, Seward, RNAV (GPS)-A, Orig
Seward, AK, Seward, SEWAR ONE Graphic DP
Seward, AK, Seward, Takeoff Minimums & Obstacle DP, Orig
Valdez, AK, Valdez Pioneer Field, LDA/DME–H, Orig-A
Newport, AR, Newport Muni, VOR/DME RWY 18, Amdt 4
Los Angeles, CA, Los Angeles Intl, ILS OR LOC RWY 6L, Amdt 12A
Los Angeles, CA, Los Angeles Intl, ILS OR LOC RWY 6R, Amdt 17A
Los Angeles, CA, Los Angeles Intl, ILS OR LOC RWY 7L, Amdt 7A
Los Angeles, CA, Los Angeles Intl, ILS OR LOC RWY 7R, Amdt 6B
Los Angeles, CA, Los Angeles Intl, ILS OR LOC RWY 24L, Amdt 26
Los Angeles, CA, Los Angeles Intl, ILS OR LOC RWY 25L, ILS RWY 25L (CAT II), ILS RWY 25L (CAT III), Amdt 12
Los Angeles, CA, Los Angeles Intl, ILS OR LOC RWY 25R, ILS RWY 25R (SA CAT I), ILS RWY 25R (SA CAT II), Amdt 17
Los Angeles, CA, Los Angeles Intl, RNAV (GPS) RWY 25R, Amdt 2
Los Angeles, CA, Los Angeles Intl, RNAV (GPS) Y RWY 24L, Amdt 2
Los Angeles, CA, Los Angeles Intl, RNAV (GPS) Y RWY 25L, Amdt 3
Los Angeles, CA, Los Angeles Intl, RNAV (RNP) Z RWY 24L, Amdt 1
Los Angeles, CA, Los Angeles Intl, RNAV (RNP) Z RWY 25L, Amdt 1
Los Angeles, CA, Los Angeles Intl, RNAV (RNP) Z RWY 25R, Orig, CANCELLED
Jekyll Island, GA, Jekyll Island, RNAV (GPS) RWY 18, Orig
Jekyll Island, GA, Jekyll Island, RNAV (GPS) RWY 36, Amdt 1
Kahului, HI, Kahului, RNAV (GPS) Y RWY 2, Amdt 1
Kahului, HI, Kahului, RNAV (RNP) Z RWY 2, Orig
Sheldon, IA, Sheldon Muni, Takeoff Minimums & Obstacle DP, Orig
Evansville, IN, Evansville Rgnl, RNAV (GPS) RWY 18, Orig
Evansville, IN, Evansville Rgnl, RNAV (GPS) RWY 36, Orig
Sparta, MI, Paul C. Miller-Sparta, VOR–A, Amdt 4
Two Harbors, MN, Richard B Helgeson, Takeoff Minimums & Obstacle DP, Orig
Springfield, MO, Springfield-Branson National, ILS OR LOC RWY 2, Amdt 18
Springfield, MO, Springfield-Branson National, RNAV (GPS) RWY 14, Amdt 2
St. Louis, MO, Lambert-St Louis Intl, RNAV (GPS) RWY 12R, Amdt 1
St. Louis, MO, Lambert-St Louis Intl, RNAV (GPS) RWY 24, Amdt 1
St. Louis, MO, Lambert-St Louis Intl, RNAV (GPS) RWY 30L, Amdt 1
Bozeman, MT, Gallatin Field, ILS OR LOC RWY 12, Amdt 8
Helena, MT, Helena Rgnl, DIVIDE ONE Graphic DP
Helena, MT, Helena Rgnl, LOC/DME BC–C, Amdt 5
Helena, MT, Helena Rgnl, Takeoff Minimums & Obstacle DP, Amdt 10
Morganton, NC, Foothills Rgnl, LOC RWY 3, Amdt 1
Morganton, NC, Foothills Rgnl, RNAV (GPS) RWY 3, Amdt 1
Morganton, NC, Foothills Rgnl, RNAV (GPS) RWY 21, Amdt 1
Morganton, NC, Foothills Rgnl, Takeoff Minimums and Obstacle DP, Amdt 2
Wahpeton, ND, Harry Stern, Takeoff Minimums & Obstacle DP, Amdt 1
Millville, NJ, Millville Muni, RNAV (GPS) RWY 14, Orig-B
Millville, NJ, Millville Muni, RNAV (GPS) RWY 32, Orig-A
Morristown, NJ, Morristown Muni, ILS OR LOC RWY 23, Amdt 10
Morristown, NJ, Morristown Muni, NDB RWY 5, Amdt 11A, CANCELLED
Morristown, NJ, Morristown Muni, NDB OR GPS RWY 23, Amdt 6C, CANCELLED
Morristown, NJ, Morristown Muni, RNAV (GPS) RWY 5, Amdt 2
Morristown, NJ, Morristown Muni, RNAV (GPS) RWY 23, Orig
Ely, NV, Ely Airport-Yelland Field, ELY ONE Graphic DP
Ely, NV, Ely Airport-Yelland Field, Takeoff Minimums and Obstacle DP, Amdt 2
Watertown, NY, Watertown Intl, RNAV (GPS) RWY 7, Amdt 2A
Cincinnati, OH, Cincinnati-Blue Ash, VOR RWY 24, Amdt 6, CANCELLED
Norman, OK, University of Oklahoma Westheimer, ILS OR LOC RWY 17, Amdt 1
Norman, OK, University of Oklahoma Westheimer, RNAV (GPS) RWY 17, Amdt 1
Perry, OK, Perry Muni, GPS RWY 17, Orig-B, CANCELLED
Perry, OK, Perry Muni, RNAV (GPS) RWY 17, Orig
Stigler, OK, Stigler Rgnl, Takeoff Minimums and Obstacle DP, Orig
Tillamook, OR, Tillamook, FETUJ TWO Graphic DP
Tillamook, OR, Tillamook, Takeoff Minimums and Obstacle DP, Amdt 1
Johnstown, PA, John Murtha Johnstown-Cambria Co., TACAN RWY 15, Orig, CANCELLED
Johnstown, PA, John Murtha Johnstown-Cambria Co., TACAN RWY 23, Orig, CANCELLED
Johnstown, PA, John Murtha Johnstown-Cambria Co., VOR/DME OR TACAN RWY 15, Amdt 6
Johnstown, PA, John Murtha Johnstown-Cambria Co., VOR/DME OR TACAN RWY 23, Amdt 3
Palmyra, PA, Reigle Field, RNAV (GPS)-A, Orig
Palmyra, PA, Reigle Field, Takeoff Minimums and Obstacle DP, Orig
Philipsburg, PA, Mid-State, ILS OR LOC RWY 16, Amdt 6B, CANCELLED
Philipsburg, PA, Mid-State, NDB RWY 16, Amdt 16B, CANCELLED
Philipsburg, PA, Mid-State, RNAV (GPS) RWY 16, Orig
Philipsburg, PA, Mid-State, VOR RWY 24, Amdt 16
Madison, SD, Madison Muni, Takeoff Minimums and Obstacle DP, Orig
Houston, TX, William P Hobby, ILS OR LOC RWY 30L, Amdt 6
Houston, TX, William P Hobby, RNAV (GPS) RWY 12R, Amdt 1A
Houston, TX, William P Hobby, RNAV (GPS) RWY 30L, Amdt 2
Houston, TX, William P Hobby, VOR/DME RWY 30L, Amdt 18
Moneta, VA, Smith Mountain Lake, RNAV (GPS) RWY 23, Orig
Waynesboro, VA, Eagle's Nest, Takeoff Minimums and Obstacle DP, Orig
Milwaukee, WI, Lawrence J. Timmerman, LOC RWY 15L, Amdt 6
Milwaukee, WI, Lawrence J. Timmerman, RNAV (GPS) RWY 15L, Orig
Milwaukee, WI, Lawrence J. Timmerman, RNAV (GPS) RWY 22R, Orig
Milwaukee, WI, Lawrence J. Timmerman, VOR RWY 4L, Amdt 9
Milwaukee, WI, Lawrence J. Timmerman, VOR RWY 15L, Amdt 14
Oconto, WI, J Douglas Bake Memorial, Takeoff Minimums and Obstacle DP, Orig
Huntington, WV, Tri-State/Milton J. Ferguson Field, ILS OR LOC RWY 30, Amdt 6
Huntington, WV, Tri-State/Milton J. Ferguson Field, RNAV (GPS) RWY 30, Orig

[FR Doc. 2011–12730 Filed 5–25–11; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30784; Amdt. No. 3427]

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 May 26, 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 May 26, 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 *http://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 FR11034; 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 May 13, 2011.

Ray Towles,

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, 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
30–Jun–11 ...	MN	Minneapolis	Minneapolis-St Paul Intl/Wold Chamberlain.	1/0391	5/6/11	RNAV (RNP) Y Rwy 35, Orig
30–Jun–11 ...	MO	Kansas City	Kansas City Intl	1/0392	5/6/11	RNAV (RNP) Z Rwy 19L, Orig
30–Jun–11 ...	MO	Kansas City	Kansas City Intl	1/0393	5/6/11	RNAV (RNP) Z Rwy 9, Orig

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
30–Jun–11 ...	MO	Kansas City	Kansas City Intl	1/0394	5/6/11	RNAV (RNP) Z Rwy 1L, Orig
30–Jun–11 ...	MO	Kansas City	Kansas City Intl	1/0395	5/6/11	RNAV (RNP) Z Rwy 1R, Orig-A
30–Jun–11 ...	MO	Kansas City	Kansas City Intl	1/0396	5/6/11	RNAV (RNP) Z Rwy 19R, Orig
30–Jun–11 ...	MO	Kansas City	Kansas City Intl	1/0397	5/6/11	RNAV (RNP) Z Rwy 27, Orig
30–Jun–11 ...	KS	Wichita	Wichita Mid-Continent	1/0398	5/6/11	RNAV (RNP) Z Rwy 19L, Orig
30–Jun–11 ...	KS	Wichita	Wichita Mid-Continent	1/0402	5/6/11	RNAV (RNP) Z Rwy 19R, Orig
30–Jun–11 ...	KS	Wichita	Wichita Mid-Continent	1/0403	5/6/11	RNAV (RNP) Z Rwy 14, Orig
30–Jun–11 ...	KS	Wichita	Wichita Mid-Continent	1/0405	5/6/11	RNAV (RNP) Z Rwy 1L, Orig
30–Jun–11 ...	IN	Indianapolis	Indianapolis Intl	1/0406	5/6/11	RNAV (RNP) Z Rwy 23R, Orig-A
30–Jun–11 ...	IN	Indianapolis	Indianapolis Intl	1/0407	5/6/11	RNAV (RNP) Z Rwy 14, Orig-A
30–Jun–11 ...	IN	Indianapolis	Indianapolis Intl	1/0408	5/6/11	RNAV (RNP) Z Rwy 5L, Orig-A
30–Jun–11 ...	IN	Indianapolis	Indianapolis Intl	1/0409	5/6/11	RNAV (RNP) Z Rwy 5R, Orig
30–Jun–11 ...	IN	Indianapolis	Indianapolis Intl	1/0410	5/6/11	RNAV (RNP) Z Rwy 23L, Orig
30–Jun–11 ...	IN	Indianapolis	Indianapolis Intl	1/0411	5/6/11	RNAV (RNP) Z Rwy 32, Orig-A
30–Jun–11 ...	PA	Pittsburgh	Pittsburgh Intl	1/0480	5/10/11	RNAV (RNP) Z Rwy 28C, Orig-A
30–Jun–11 ...	PA	Pittsburgh	Pittsburgh Intl	1/0481	5/10/11	RNAV (RNP) Z Rwy 10R, Orig-A
30–Jun–11 ...	PA	Pittsburgh	Pittsburgh Intl	1/0482	5/10/11	RNAV (RNP) Z Rwy 10C, Orig-A
30–Jun–11 ...	PA	Pittsburgh	Pittsburgh Intl	1/0483	5/10/11	RNAV (RNP) Z Rwy 28R, Orig-A
30–Jun–11 ...	PA	Pittsburgh	Pittsburgh Intl	1/0484	5/10/11	RNAV (RNP) Z Rwy 28L, Orig-A
30–Jun–11 ...	FL	Miami	Miami Intl	1/0488	5/10/11	RNAV (RNP) Y Rwy 12, Orig-A
30–Jun–11 ...	FL	Miami	Miami Intl	1/0490	5/10/11	RNAV (RNP) Y Rwy 30, Orig
30–Jun–11 ...	FL	Miami	Miami Intl	1/0491	5/10/11	RNAV (RNP) Y Rwy 8R, Orig
30–Jun–11 ...	FL	Miami	Miami Intl	1/0492	5/10/11	RNAV (RNP) Y Rwy 27, Amdt 1
30–Jun–11 ...	TN	Memphis	Memphis Intl	1/0493	5/10/11	RNAV (RNP) Y Rwy 18C, Orig
30–Jun–11 ...	NJ	Newark	Newark Liberty Intl	1/0498	5/11/11	RNAV (RNP) Y Rwy 22L, Orig-D
30–Jun–11 ...	NJ	Newark	Newark Liberty Intl	1/0499	5/11/11	RNAV (RNP) Z Rwy 4R, Orig-A
30–Jun–11 ...	TN	Memphis	Memphis Intl	1/0885	5/10/11	RNAV (RNP) X Rwy 18L, Orig-A
30–Jun–11 ...	TN	Memphis	Memphis Intl	1/0886	5/10/11	RNAV (RNP) X Rwy 18R, Orig-A
30–Jun–11 ...	TN	Memphis	Memphis Intl	1/0887	5/10/11	RNAV (RNP) Y Rwy 18L, Orig-A
30–Jun–11 ...	TN	Memphis	Memphis Intl	1/0888	5/10/11	RNAV (RNP) Y Rwy 18R, Orig-A
30–Jun–11 ...	PA	Pittsburgh	Pittsburgh Intl	1/0889	5/10/11	RNAV (RNP) Z Rwy 32, Amdt 1A
30–Jun–11 ...	NJ	Newark	Newark Liberty Intl	1/0907	5/11/11	RNAV (RNP) Z Rwy 29, Orig-B
30–Jun–11 ...	NJ	Newark	Newark Liberty Intl	1/0908	5/11/11	RNAV (RNP) Y Rwy 29, Orig-B
30–Jun–11 ...	CA	San Francisco	San Francisco Intl	1/7104	5/11/11	RNAV (GPS) Y Rwy 19R, Orig
30–Jun–11 ...	CA	San Francisco	San Francisco Intl	1/7105	5/11/11	RNAV (GPS) Z Rwy 10R, Orig-B
30–Jun–11 ...	CA	San Francisco	San Francisco Intl	1/7106	5/11/11	RNAV (GPS) Z Rwy 19R, Orig-B
30–Jun–11 ...	CA	San Francisco	San Francisco Intl	1/7107	5/11/11	RNAV (GPS) Rwy 10L, Amdt 1
30–Jun–11 ...	CA	San Francisco	San Francisco Intl	1/7108	5/11/11	RNAV (GPS) Y Rwy 19L, Orig
30–Jun–11 ...	MN	Pinecreek	Piney Pinecreek Border	1/7478	4/28/11	NDB OR GPS Rwy 33, Orig
30–Jun–11 ...	MI	Marquette	Sawyer Intl	1/9049	5/6/11	ILS OR LOC Rwy 1, Orig-B
30–Jun–11 ...	MI	Marquette	Sawyer Intl	1/9050	5/6/11	NDB Rwy 1, Orig-A
30–Jun–11 ...	WA	Seattle	Boeing Field/King County Intl	1/9827	5/2/11	RNAV (RNP) Z Rwy 13R, Orig-B
30–Jun–11 ...	WA	Wenatchee	Pangborn Memorial	1/9828	5/2/11	RNAV (RNP) Rwy 12, Orig
30–Jun–11 ...	WA	Wenatchee	Pangborn Memorial	1/9830	5/2/11	RNAV (RNP) Rwy 30, Orig
30–Jun–11 ...	MT	Helena	Helena Rgnl	1/9842	5/2/11	RNAV (RNP) Z Rwy 27, Orig
30–Jun–11 ...	MT	Helena	Helena Rgnl	1/9843	5/2/11	RNAV (RNP) Z Rwy 9, Orig-A
30–Jun–11 ...	MT	Helena	Helena Rgnl	1/9844	5/2/11	RNAV (RNP) Y Rwy 27, Orig
30–Jun–11 ...	MT	Kalispell	Glacier Park Intl	1/9845	5/2/11	RNAV (RNP) Rwy 20, Orig
30–Jun–11 ...	MT	Kalispell	Glacier Park Intl	1/9847	5/2/11	RNAV (RNP) Y Rwy 2, Orig
30–Jun–11 ...	MT	Missoula	Missoula Intl	1/9848	5/2/11	RNAV (RNP) Z Rwy 11, Orig-A
30–Jun–11 ...	MT	Missoula	Missoula Intl	1/9851	5/2/11	RNAV (RNP) Rwy 29, Orig
30–Jun–11 ...	ID	Idaho Falls	Idaho Falls Rgnl	1/9866	5/2/11	RNAV (RNP) Z Rwy 20, Orig-A
3–Jun–11	ID	Idaho Falls	Idaho Falls Rgnl	1/9868	5/2/11	RNAV (RNP) Z Rwy 2, Orig
30–Jun–11 ...	ID	Lewiston	Lewiston-Nez Perce County	1/9882	5/2/11	RNAV (RNP) Z Rwy 12, Orig
30–Jun–11 ...	ID	Lewiston	Lewiston-Nez Perce County	1/9883	5/2/11	RNAV (RNP) Z Rwy 8, Orig
30–Jun–11 ...	ID	Lewiston	Lewiston-Nez Perce County	1/9885	5/2/11	RNAV (RNP) Z Rwy 26, Orig
30–Jun–11 ...	ID	Lewiston	Lewiston-Nez Perce County	1/9887	5/2/11	RNAV (RNP) Rwy 30, Orig-A
30–Jun–11 ...	OR	Medford	Rogue Valley Intl—Medford	1/9921	5/2/11	RNAV (RNP) Rwy 32, Orig
30–Jun–11 ...	OR	Medford	Rogue Valley Intl—Medford	1/9922	5/2/11	RNAV (RNP) Z Rwy 14, Orig

[FR Doc. 2011–12731 Filed 5–25–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 774

The Commerce Control List

CFR Correction

In Title 15 of the Code of Federal Regulations, Parts 300 to 799, revised as of January 1, 2011, on page 802, in Supplement No. 1 to Part 774, in Category 6, in ECCN 6A005, the following text is reinstated at the end of the entry:

6A005 "Lasers" (other than those described in 0B001.g.5 or .h.6), components and optical equipment, as follows (see List of Items Controlled).

* * * * *

Items:

* * * * *

d.5. "Chemical lasers", as follows:

d.5.a. Hydrogen Fluoride (HF) "lasers";

d.5.b. Deuterium Fluoride (DF) "lasers";

d.5.c. "Transfer lasers", as follows:

d.5.c.1. Oxygen Iodine (O2–I) "lasers";

d.5.c.2. Deuterium Fluoride-Carbon dioxide (DF–CO2) "lasers";

d.6. "Non-repetitive pulsed" Neodymium (Nd) glass "lasers", having any of the following:

d.6.a. A "pulse duration" not exceeding 1 μs and an output energy exceeding 50 J per pulse; or

d.6.b. A "pulse duration" exceeding 1 μs and an output energy exceeding 100 J per pulse;

NOTE: "Non-repetitive pulsed" refers to "lasers" that produce either a single output pulse or that have a time interval between pulses exceeding one minute.

e. Components, as follows:

e.1. Mirrors cooled either by active cooling or by heat pipe cooling; Technical Note: Active cooling is a cooling technique for optical components using flowing fluids within the subsurface (nominally less than 1 mm below the optical surface) of the optical component to remove heat from the optic.

e.2. Optical mirrors or transmissive or partially transmissive optical or electro-optical components specially designed for use with controlled "lasers";

f. Optical equipment, as follows:

N.B.: For shared aperture optical elements, capable of operating in "Super-High Power Laser" ("SHPL") applications, see the U.S. Munitions List (22 CFR part 121).

f.1. Dynamic wavefront (phase) measuring equipment capable of mapping at least 50 positions on a beam wavefront having any the following:

f.1.a. Frame rates equal to or more than 100 Hz and phase discrimination of at least 5% of the beam's wavelength; or

f.1.b. Frame rates equal to or more than 1,000 Hz and phase discrimination of at least 20% of the beam's wavelength;

f.2. "Laser" diagnostic equipment capable of measuring "SHPL" system angular beam steering errors of equal to or less than 10 μrad;

f.3. Optical equipment and components specially designed for a phased-array "SHPL" system for coherent beam combination to an accuracy of lambda/10 at the designed wavelength, or 0.1 μm, whichever is the smaller;

f.4. Projection telescopes specially designed for use with "SHPL" systems.

[FR Doc. 2011–13179 Filed 5–25–11; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 67

RIN 1024–AD65

Historic Preservation Certifications for Federal Income Tax Incentives

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: The National Park Service (NPS) is amending its procedures for obtaining historic preservation certifications for rehabilitation of historic structures. Individuals and corporations must obtain these certifications to be eligible for tax credits from the Internal Revenue Service (IRS). This rule incorporates references to the revised sections of the Internal Revenue Code containing the requirements for obtaining a tax credit; replaces references to NPS's regional offices with references to its Washington Area Service Office (WASO); requires NPS to accept appeals for denial of certain certifications; and removes the certification fee schedule from the regulation. These latter two revisions provide an additional avenue for appeals and allow NPS to update fees by publishing a notice in the **Federal Register** as administrative costs change.

DATES: The rule becomes effective June 27, 2011.

ADDRESSES: Chief, Heritage Preservation Services Program, National Park Service, 1849 C Street, NW. (org code 2255), Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Michael J. Auer, National Park Service, 1849 C Street, NW. (org code 2255), Washington, DC 20240; *Michael_Auer@nps.gov;* fax: 202–371–1616.

SUPPLEMENTARY INFORMATION

Background

Section 47 of Title 26 of the United States Code (the Internal Revenue Code), formerly Section 48(g), authorizes tax credits for qualified expenditures of funds for "certified rehabilitation" of "certified historic structures." This section of the Internal Revenue Code designates the Secretary of the Interior as the authority for review of applications for certifications to verify: (a) That buildings undergoing rehabilitation are "certified historic structures," and (b) that the rehabilitation preserves the overall historic character of the buildings, and therefore is a "certified rehabilitation."

These approvals take the form of notifications or "certifications" by the Secretary of the Interior to the Secretary of the Treasury. In addition, section 170(h) of the Internal Revenue Code allows a Federal income tax deduction for the donation of interests in qualified real property for conservation purposes.

Section 170(h) also designates the Secretary of the Interior as the authority who receives applications and issues certifications verifying to the Secretary of the Treasury that the building or buildings contribute to the significance of a historic district.

The final rule removes outdated references to the Internal Revenue Code, and deletes references to the regional offices and substitutes the NPS Washington office in their place. The final rule also lifts the prohibition on appeals from the denial of preliminary certification for rehabilitation of a property that is not a certified historic structure. The final rule also removes the certification fee schedule from the regulation, and incorporates an explanation of the method by which we will determine the kind and amount of review fees to be charged in the future. Until a revised means of determining fees is decided upon, approved, and published, the 1984 fee schedule will remain in effect. The changes are technical rather than substantive in nature.

Public Comments

The proposed rule was published on October 15, 2010 (75 FR 63428) and was open for public comment for 60 days. We received three comments. One was fully in support of the changes. The second made several proposals on how fees charged by NPS for review of rehabilitation certification applications should be set and used by the agency. However, the rule does not change the fee schedule, but merely removes it from the text of the regulations (in accordance with standard government practice). The third suggests that the rule state that the program is administered by the National Park Service in general rather than by the Washington Area Service Office of the NPS. The agency believes it serves a useful purpose to inform the public where the program is administered within a large government agency. Accordingly, the agency does not believe that further change to the rule is warranted

Compliance With Other Laws, Executive Orders, and Department Policies

Regulatory Planning and Review (Executive Order 12866)

The Office of Management and Budget has determined that this document is not a significant rule. We have made the assessments required by Executive Order 12866 and the results are available as a supporting document with the proposed rule at *http://www.regulations.gov.*

(1) The results of the NPS cost/benefit analysis are that this rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. It is an agency-specific rule. No other Federal agency designates "certified historic structures" or "certified rehabilitations" for Federal income tax incentives.

(3) This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. This rule updates statutory authority, deletes references to regional offices and substitutes the NPS Washington office in their place, authorizes additional administrative appeals, and removes from the text of the regulations the fee dollar amounts and specific instructions for charging fees.

(4) This rule does not raise novel legal or policy issues.

Regulatory Flexibility Act (RFA)

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act, (5 U.S.C. 601 *et seq.*).

The NPS threshold analysis as part of the NPS cost-benefit analysis concluded the proposed rule would generate positive benefits for all affected businesses with no negative impacts.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million or more. The rule merely updates statutory authority, revises references to NPS offices, authorizes additional administrative appeals, and deletes specific dollar amount of application review fees—changes that the Office of Management and Budget (OMB) has determined are purely technical in nature.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. The rule does not impose any new requirements on building owners undertaking building rehabilitations.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. OMB has determined that the changes proposed in the rule are purely technical. Moreover, the tax incentives program involves purely domestic buildings and entities.

Unfunded Mandates Reform Act (UMRA)

This rule does not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local or Tribal governments or the private sector.

Although State Historic Preservation Offices receive applications for the Federal tax incentives and forward them to the NPS, with a recommendation, State participation in this program is funded through the Historic Preservation Fund administered by the NPS.

Takings (Executive Order 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications. Application for the Federal historic preservation tax incentives program is on a voluntary basis by owners seeking a benefit in the form of Federal income tax incentives. A takings implication assessment is not required.

Federalism (Executive Order 13132)

Under the criteria in Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism summary impact statement. The rule does not preempt or conflict with any State or local law. A Federalism impact statement is not required.

Civil Justice Reform (Executive Order 12988)

This rule complies with the requirements of Executive Order 12988. Specifically, this rule:

a. Meets the criteria requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

b. Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Consultation With Indian Tribes (Executive Order 13175)

Under the criteria in Executive Order 13175, we have evaluated this rule and determined that it has no potential effects on Federally recognized Indian Tribes. The rule has no Tribal implications, and does not impose any costs on Indian Tribal governments.

Paperwork Reduction Act (PRA)

This rule contains information collection requirements and a submission under the Paperwork Reduction Act is required. OMB has approved the information collection and has assigned approval number 1024–0009, expiring on 03/31/2013. A Federal agency may not conduct or sponsor and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number. Part 1 of the application is used in requesting a certification of historic significance or non-significance and preliminary determinations. Part 2 of the application is used in requesting an evaluation of a proposed rehabilitation project or (in conjunction with a request for certification of completed work) a certification of a completed rehabilitation project. Information contained in the application is required to obtain a benefit. We estimate the burden associated with this information collection to be 4.6 hours per response including the time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. Direct your comments regarding this burden estimate or any aspect of this form to the Manager, Administrative Program Center, National Park Service, 1849 C Street, NW., Washington, DC 20240 and to the Office of Management and Budget, Paperwork Reduction Project Number 1024–0009, Washington, DC 20503.

National Environmental Policy Act (NEPA)

This rule is developed under the authority of the National Historic Preservation Act, particularly 16 U.S.C. 470a(a)(1)(A), and 26 U.S.C. 47 (Internal

Revenue Code), and does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 is not required because the rule is administrative and procedural in nature and therefore is covered by a categorical exclusion under 43 CFR 46.205(b) and 46.210(i). We have also determined that the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under the National Environmental Policy Act.

Information Quality Act (IQA)

In developing this rule we did not conduct or use a study, experiment, or survey requiring peer review under the Information Quality Act (Pub. L. 106–554).

Effects on the Energy Supply (Executive Order 13211)

This rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

List of Subjects in 36 CFR Part 67

Administrative practice and procedures, Historic preservation, Income taxes, Reporting and recordkeeping requirements.

In consideration of the foregoing, 36 CFR part 67 is amended as follows:

PART 67—HISTORIC PRESERVATION CERTIFICATIONS UNDER THE INTERNAL REVENUE CODE

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

Authority: 16 U.S.C. 470a(a)(1)(A); 26 U.S.C. 47 and 170(h).

■ 2. Revise the part heading to read as set forth above.

■ 3. In part 67, remove the word[s] in the "remove" column wherever they occur and add in their place the word[s] in the "add" column in the following table:

Remove	Add
regional office	WASO
regional offices	WASO
Sec. 48(g)	Sec. 47
section 48(g)	section 47

■ 4. In § 67.1, revise the section heading, paragraph (a), and the first sentence of paragraph (b) to read as follows:

§ 67.1 Program authority and function.

(a) Section 47 of the Internal Revenue Code designates the Secretary as the authority for the issuance of certifications of historic district statutes and of State and local historic districts, certifications of significance, and certifications of rehabilitation in connection with certain tax incentives involving historic preservation. These certification responsibilities have been delegated to the National Park Service (NPS); the following office issues those certifications: National Park Service, Washington Area Service Office, Technical Preservation Services, Heritage Preservation Services (WASO), 1849 C Street, NW., Washington, DC 20240.

(b) NPS WASO establishes program direction and considers appeals of certification denials. * * *

* * * * *

■ 7. In § 67.4, revise paragraph (g) to read as follows:

§ 67.4 Certifications of historic significance.

* * * * *

(g) For purposes of the other rehabilitation tax credits under section 47 of the Internal Revenue Code, properties within registered historic districts are presumed to contribute to the significance of such districts unless certified as nonsignificant by the Secretary. Owners of non-historic properties within registered historic districts, therefore, must obtain a certification of nonsignificance in order to qualify for those investment tax credits. If an owner begins or completes a substantial rehabilitation (as defined by the Internal Revenue Service) of a property in a registered historic district without knowledge of requirements for certification of nonsignificance, he or she may request certification that the property was not of historic significance to the district prior to substantial rehabilitation in the same manner as stated in paragraph (c) of this section. The owner should be aware, however, that the taxpayer must certify to the Secretary of the Treasury that, at the beginning of such substantial rehabilitation, he or she in good faith was not aware of the certification requirement by the Secretary of the Interior.

* * * * *

■ 8. In § 67.5 revise the section heading to read as follows:

§ 67.5 Standards for evaluating significance within registered historic districts.

* * * * *

■ 9. In § 67.7 revise the section heading to read as follows:

§ 67.7 Standards for rehabilitation.

* * * * *

■ 10. In § 67.10, revise paragraphs (a), (b), and (c)(3) to read as follows:

§ 67.10 Appeals.

(a) The owner or a duly authorized representative may appeal any of the certifications or denials of certification made under this part or any decisions made under § 67.6(f).

(1) Appeals must:

(i) Be in writing; e.g. letter, fax, or e-mail;

(ii) Be addressed to the Chief Appeals Officer, Cultural Resources, National Park Service, U.S. Department of the Interior, 1849 C Street, NW., Washington, DC 20240;

(iii) Be received by NPS within 30 days of receipt by the owner or a duly authorized representative of the decision which is the subject of the appeal; and

(iv) Include all information the owner wishes the Chief Appeals Officer to consider in deciding the appeal.

(2) The appellant may request a meeting to discuss the appeal.

(3) NPS will notify the SHPO that an appeal is pending.

(4) The Chief Appeals Officer will consider the record of the decision in question, any further written submissions by the owner, and other available information and will provide the appellant a written decision as promptly as circumstances permit.

(5) Appeals under this section constitute an administrative review of the decision appealed from and are not conducted as an adjudicative proceeding.

(b) The denial of a preliminary determination of significance for an individual property may not be appealed by the owner because the denial itself does not exhaust the administrative remedy that is available. The owner instead must seek recourse by undertaking the usual nomination process (36 CFR part 60).

(c) * * *

(3) Resubmit the matter to WASO for further consideration; or

* * * * *

■ 11. Revise § 67.11 to read as follows:

§ 67.11 Fees for processing certification requests.

(a) Fees are charged for reviewing certification requests according to the schedule and instructions provided in public notices in the **Federal Register** by NPS.

(b) No payment should be made until requested by the NPS. A certification decision will not be issued on an

application until the appropriate remittance is received.

(c) Fees are nonrefundable.

Dated: May 13, 2011.

Eileen Sobeck,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2011–12754 Filed 5–25–11; 8:45 am]

BILLING CODE 4310–EN–P

POSTAL SERVICE

39 CFR Part 111

Adult Signature Services

AGENCY: Postal Service™.

ACTION: Final rule.

SUMMARY: The Postal Service is revising the *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM®) 503.8, to add a new extra service called Adult Signature. This new service has two available options: Adult Signature Required and Adult Signature Restricted Delivery.

DATES: Effective July 5, 2011.

FOR FURTHER INFORMATION CONTACT: Karen Key at 202–268–7492 or Richard Daigle at 202–268–6392.

SUPPLEMENTARY INFORMATION: On March 28, 2011, the Postal Regulatory Commission (PRC) approved Adult Signature as a new extra service which will provide a method for customers to obtain a signature (upon delivery) from an adult recipient who is 21 years of age or older. This new extra service will be available only to commercial and online mailers beginning June 5, 2011.

This is the first time the Postal Service is offering a service that includes verification of the age of the recipient at the time of delivery. These services will be available to commercial and online customers using Express Mail®, Priority Mail® (including Critical Mail™), Parcel Select® barcoded nonpresort, and Parcel Select Regional Ground mailpieces. The requirements for the two service offerings are:

- Adult Signature Required—requires the signature of someone 21 years of age or older at the recipient's address.
- Adult Signature Restricted Delivery—requires the signature of a specific addressee (or authorized agent), who must be 21 years of age or older.

Prior to signing for the mailpiece, the recipient must show a government-issued photo identification that includes his or her date of birth. Adult Signature mailpieces cannot be left at the address without first obtaining the signature of an adult who is 21 years of age or older.

Adult Signature Required and Adult Signature Restricted Delivery are only available for customers who pay for postage and applicable fees using any of these methods:

- Click-N-Ship®.
- USPS®-approved PC Postage® (registered end-users only).
- Permit imprint, if the customer electronically submits postage statements and mailing documentation.
- USPS-approved Information-Based Indicia (IBI) postage meters that print the IBI with the appropriate price marking and electronically transmit transactional data to USPS.

Technical specifications for privately printed Adult Signature labels are located in the Intelligent Mail Package Barcode Specification and the addendum to Publication 91, *Addendum for Intelligent Mail Package Barcode (IMpb) and 3-digit Service Type Code,* available on the RIBBS® Web site at *http://ribbs.usps.gov.*

Additionally, in combination with Express Mail or Priority Mail and postage paid by Click-N-Ship or PC Postage, Adult Signature will provide an optional delivery method for the mailing of cigarettes and smokeless tobacco under the "Exception for Certain Individuals" standard as described in DMM section 601.11.

All other requirements and conditions related to mailing cigarettes and smokeless tobacco products under the Prevent All Cigarette Trafficking Act (PACT) of 2009 remain in effect; such as:

- Each shipment must be presented via a face-to-face transaction with a postal employee.
- No Pickup on Demand or Carrier Pickup options are available.
- Each package must bear its own unique exception package markings.

While the minimum age to purchase tobacco in the state or locality where the shipment is tendered or delivered may be different from age 21, if Adult Signature is used, the recipient must be 21 years of age.

The Postal Service adopts the following changes to *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM), incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

Accordingly, 39 CFR part 111 is amended as follows:

PART 111—[AMENDED]

■ 1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 13 U.S.C. 301–307; 18 U.S.C. 1692–1737; 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

■ 2. Revise the following sections of *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM) as follows:

Mailing Standards of the United States Postal Service, **Domestic Mail Manual (DMM)**

* * * * *

200 Commercial Letters and Cards

* * * * *

220 Priority Mail

223 Prices and Eligibility

* * * * *

3.0 Basic Standards for Priority Mail

* * * * *

3.2 Additional Standards for Critical Mail Letters

[Delete the reference number and heading of 3.2.1, Definition, in its entirety, and move the text from 3.2.1 under 3.2.]

[Delete item 3.2.2, Extra Service with Critical Mail Letters, in its entirety.]

* * * * *

300 Commercial Flats

* * * * *

320 Priority Mail

323 Prices and Eligibility

* * * * *

3.0 Basic Standards for Priority Mail

* * * * *

3.2 Additional Standards for Critical Mail Flats

[Delete the reference number and heading of 3.2.1, Definition, in its entirety, and move the text from 3.2.1 under 3.2.]

[Delete item 3.2.2, Extra Service with Critical Mail Flats, in its entirety.]

* * * * *

500 Additional Mailing Services

503 Extra Services

1.0 Extra Services for Express Mail

1.1 Available Services

* * * * *

[Renumber current items 1.1.5 through 1.1.8 as 1.1.6 through 1.1.9 and add new 1.1.5 as follows:]

1.1.5 Adult Signature

Adult Signature Required and Adult Signature Restricted Delivery are available with Express Mail for mailers who pay commercial or online postage

and applicable fees and produce qualified shipping labels that bear an Intelligent Mail package barcode.

* * * * *

3.0 Certified Mail

* * * * *

3.2 Basic Information

* * * * *

3.2.3 Additional Services

[Revise 3.2.3 as follows:]

The following services may be combined with Certified Mail if the applicable standards for the services are met and additional service fees are paid:

a. Return receipt (not available for Adult Signature).

b. Restricted delivery (not available for Adult Signature).

c. Adult Signature Required and Adult Signature Restricted Delivery (available only for Priority Mail, but not Critical Mail).

* * * * *

4.0 Insured Mail

* * * * *

4.2 Basic Information

* * * * *

4.2.4 Additional Services

[Revise the introductory text of 4.2.4 as follows:]

Insuring an item for more than $200.00 allows customers to purchase restricted delivery or return receipt. The following services may be combined with insurance if the applicable standards for the services are met and additional service fees are paid:

* * * * *

[Add new item 4.2.4f as follows:]

f. Adult Signature Required and Adult Signature Restricted Delivery are available for insured Express Mail, Priority Mail (including Critical Mail), Parcel Select barcoded nonpresort, and Parcel Select Regional Ground.

* * * * *

[Renumber 8.0 through 14.0 as new 9.0 through 15.0 and add new 8.0 as follows:]

8.0 Adult Signature

8.1 Prices

8.1.1 Adult Signature Fees and Postage

The fees for Adult Signature Required and Adult Signature Restricted Delivery are in addition to postage and other fees, and are charged per piece. See Notice 123—Price List.

8.1.2 Postage

The Adult Signature Required or Adult Signature Restricted Delivery fee must be paid in addition to the correct postage. The fee and postage may be paid with:

a. Click-N-Ship.

b. PC Postage.

c. Permit imprint, if the customer electronically submits postage statements and mailing documentation.

d. IBI postage meter.

8.1.3 Refund

Adult Signature Required and Adult Signature Restricted Delivery fees are refunded only if the USPS fails to provide the service.

8.2 Basic Information

8.2.1 Description

Adult Signature provides electronic confirmation of the delivery or attempted delivery of the mailpiece and, upon request, the recipient's signature. The service has two options: Adult Signature Required and Adult Signature Restricted Delivery. The recipient must furnish proof of age via a driver's license, passport, or other government-issued photo identification that lists age or date of birth prior to delivery. The USPS maintains a record of delivery (which includes the recipient's signature) for a specified period of time.

8.2.1.1 Adult Signature Required

Adult Signature Required provides delivery to a person who is confirmed to be 21 years of age or older. Upon delivery, an adult who is 21 years of age or older must provide a driver's license, passport, or other government-issued photo identification that lists age or date of birth and provide a signature for receipt of the mailpiece.

8.2.1.2 Adult Signature Restricted Delivery

Adult Signature Restricted Delivery provides the same service as Adult Signature Required with the additional restriction of limiting delivery to a *specific* addressee or authorized agent who is 21 years of age or older. If the specific addressee is not 21 years of age or older, the mailpiece will be returned to sender.

8.2.2 Obtaining Service

Customers may obtain Adult Signature Required and Adult Signature Restricted Delivery by paying postage (see 8.1.2) and producing qualified shipping labels with Intelligent Mail package barcodes.

8.2.3 Eligible Matter

Adult Signature Required and Adult Signature Restricted Delivery are available for:

a. Express Mail.

b. Priority Mail (including Critical Mail).

c. Parcel Select barcoded nonpresort.

d. Parcel Select Regional Ground.

8.2.4 Ineligible Matter

Adult Signature Required and Adult Signature Restricted Delivery are not available for:

a. First-Class Mail.

b. Standard Mail.

c. Package Services.

d. Periodicals.

e. Parcel Select destination entry, NDC Presort, and ONDC presort pieces.

f. Mail addressed to restricted APO, FPO, and DPO destinations.

g. Mail addressed to the Department of State in accordance with 703.3.

h. Mail addressed to ZIP Codes in the following U.S. territories or Freely Associated States:

ZIP CODE	TWO-LETTER STATE ABBREVIATION	CITY	TERRITORY, POSSESSION OR FREELY ASSOCIATED STATE
96939	PW	PALAU	PALAU.
96940	PW	PALAU	PALAU.
96941	FM	POHNPEI	FEDERATED STATES OF MICRONESIA.
96942	FM	CHUUK	FEDERATED STATES OF MICRONESIA.
96943	FM	YAP	FEDERATED STATES OF MICRONESIA.
96944	FM	KOSRAE	FEDERATED STATES OF MICRONESIA.
96960	MH	MAJURO	MARSHALL ISLANDS.
96970	MH	EBEYE	MARSHALL ISLANDS.

8.2.5 Confirmation of Delivery

Confirmation of delivery information for Adult Signature is available as follows:

a. Information by article number can be retrieved at *http://www.usps.com* or by calling 800–222–1811. A letter providing evidence of delivery may be provided via fax, e-mail, or mail upon request.

b. Letters providing evidence of delivery can be obtained in CD–ROM or Signature Extract File formats. For additional information, see Publication 80, *Bulk Proof of Delivery Program.*

8.2.6 Additional Services

Adult Signature may also be combined with:

a. Certified Mail (available with Priority Mail, but not Critical Mail).

b. Insured Mail.

c. Hold for Pickup.

1. Express Mail (commercial mail only, see 413.4.2.4 and 413.4.3.4).

2. Priority Mail (excluding Critical Mail).

3. Parcel Select barcoded nonpresort.

4. Parcel Select Regional Ground.

8.3.0 Basic Delivery Standards

Items with Adult Signature require a recipient who is 21 years of age or older to sign at the time of delivery.

8.3.1 Additional Delivery Conditions

Mail endorsed "Adult Signature Required" is delivered to anyone who is confirmed to be 21 years of age or older and provides a signature at the time of delivery. Mail endorsed "Adult Signature Restricted Delivery" is delivered only to the addressee or authorized agent who is confirmed to be 21 years of age or older. If the specific addressee is not 21 years of age or older, the mailpiece will be returned to sender. Conditions in 7.4 also apply to Adult Signature Restricted Delivery items.

8.3.2 Identification

The USPS requires a driver's license, passport, or other government-issued photo identification that lists age or date of birth to provide proof of age for Adult Signature Required or proof of age and identity for Adult Signature Restricted Delivery.

8.3.3 Agent Authorization

An addressee who regularly receives any mail that includes a restricted delivery may authorize an agent to accept mail on their behalf by using Form 3801 or by letter to the postmaster. The authorized agent must be 21 years of age or older. The addressee must make the notation "this authorization is extended to include Adult Signature Restricted Delivery mail" on Form 3801 (in the area for signatures of authorized agents) or in the letter to the postmaster. If the Post Office has no standing delivery order or letter on file, a Form 3849, completed by the addressee, may be left for this authorization. The addressee enters the name of the agent on the back of Form 3849 in the space provided and signs the form. For receipt of the article, the agent must sign on the back of the form.

8.4.0 Privately Printed Labels

Technical specifications for privately printed Adult Signature labels is located in the Intelligent Mail Package Barcode Specification and the addendum to Publication 91, *Addendum for Intelligent Mail Package Barcode (IMpb) and 3-digit Service Type Code,* available on the RIBBS Web site at *http://ribbs.usps.gov.*

8.5.0 Where To Mail

Except for shipments of cigarettes and smokeless tobacco by certain individuals under 601.11, which requires mailers to present items at a retail counter, mailers may deposit mailpieces (not bearing a permit imprint) with Adult Signature at a Post Office lobby drop, collection box, or with a USPS carrier. Mail bearing a permit imprint must be deposited and accepted at the Post Office that issued the permit, at a time and place designated by the postmaster, except as otherwise provided for plant-verified drop shipments.

8.6.0 Firm Sheets—Three or More Pieces

If three or more mailpieces are presented for mailing at one time, the mailer may use Form 3877. Privately printed or computer-generated firm sheets that contain the same information as Form 3877 may be used if approved by the local postmaster. The mailer may omit columns on Form 3877 that are not applicable to Adult Signature. Required elements are the package identification code (PIC), address, 5-digit destination ZIP Code, and applicable fees. To obtain firm sheets receipted by the USPS, the mailer must present the firm sheets with the mailpieces at the time of mailing. Alterations must be initialed by the mailer and accepting postal employee. All unused portions of the addressee column must be obliterated with a diagonal line.

* * * * *

508 Recipient Services

* * * * *

7.0 Hold for Pickup

* * * * *

7.2 Basic Information

* * * * *

7.2.6 Extra Services

Hold for Pickup may be combined with:

* * * * *

[Insert new items 7.2.6d as follows:]

d. Adult Signature Required and Adult Signature Restricted Delivery

* * * * *

600 Basic Standards for All Mailing Services

601 Mailability

* * * * *

11.0 Cigarettes and Smokeless Tobacco

* * * * *

11.6 Exception for Certain Individuals

* * * * *

11.6.2 Mailing

* * * Each mailing under the "certain individuals" exception must:

[Revise 11.6.2a as follows:]

a. Be entered as Priority Mail with an Adult Signature extra service (see 503.8), Express Mail with an Adult Signature extra service or Express Mail with Hold for Pickup service (waiver of signature and pickup services not permitted); unless shipped to APO/FPO/DPO addresses under 11.6.4.

* * * * *

700 Special Standards

703 Nonprofit Standard Mail and Other Unique Eligibility

* * * * *

3.0 Department of State Mail

* * * * *

3.2 Conditions for Authorized Mail

* * * * *

3.2.6 Extra Services

* * * (Mailers may request other extra services under 503.)

* * * * *

[Add new item 3.2.6f as follows:]

f. Adult Signature Required and Adult Signature Restricted Delivery

* * * * *

We will publish an appropriate amendment to 39 CFR part 111 to reflect these changes.

Neva R. Watson,

Attorney, Legislative.

[FR Doc. 2011–13029 Filed 5–25–11; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–R01–OAR–2010–1080; A–1–FRL–9285–8]

Approval of the Clean Air Act, Section 112(l), Authority for Hazardous Air Pollutants: Perchloroethylene Air Emission Standards for Dry Cleaning Facilities: State of Maine Department of Environmental Protection

AGENCY: Environmental Protection Agency ("EPA").

ACTION: Direct final rule.

SUMMARY: Pursuant to section 112(l) of the Clean Air Act ("CAA") and Federal regulations promulgated thereunder, the Maine Department of Environmental Protection ("ME DEP") submitted a request for approval to implement and enforce the amended "Chapter 125: Perchloroethylene Dry Cleaner Regulation" (Maine Dry Cleaner Rule) as a partial substitution for the amended National Emissions Standards for Hazardous Air Pollutants for Perchloroethylene Dry Cleaning Facilities ("Dry Cleaning NESHAP"), as it applies to area sources. EPA has reviewed this request and has determined that the amended Maine Dry Cleaner Rule satisfies the requirements necessary for partial substitution approval. Thus, EPA is hereby granting ME DEP the authority to implement and enforce its amended Maine Dry Cleaner Rule in place of the Dry Cleaning NESHAP for area sources, but EPA is retaining its authority with respect to major source dry cleaners and dry cleaners installed in a residence between July 13, 2006, and June 24, 2009. This approval makes the amended Maine Dry Cleaner Rule Federally enforceable.

DATES: This direct final rule will be effective July 25, 2011, unless EPA receives adverse comments by June 27, 2011. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of July 25, 2011.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R01–OAR–2010–1080 by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.

2. *E-mail: mcdonnell.ida@epa.gov.*

3. *Fax:* (617) 918–0653.

4. *Mail:* "EPA–R01–OAR–2010–1080", Ida E. McDonnell, U.S. Environmental Protection Agency, EPA New England Regional Office, Five Post Office Square, Suite 100 (OEP05–2), Boston, MA 02109–3912.

5. *Hand Delivery or Courier.* Deliver your comments to: Ida E. McDonnell, Manager, Air Permits, Toxics and Indoor Programs Unit, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, Five Post Office Square, 5th floor, (OEP5–02), Boston, MA 02109–3912. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R01–OAR–2010–1080. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information ("CBI") or other information whose disclosure is restricted by statute. Do not submit through *http://www.regulations.gov,* or e-mail, information that you consider to be CBI or otherwise protected. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. EPA will forward copies of all submitted comments to the Maine Department of Environmental Protection.

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, Five Post Office Square, Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

In addition, copies of the State submittal are also available for public inspection during normal business hours, by appointment at the Maine Department of Environmental Protection, State House Station 17, Augusta, Maine, 04333–0017.

FOR FURTHER INFORMATION CONTACT: Susan Lancey, Air Permits, Toxics and Indoor Programs Unit, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, Five Post Office Square, Suite 100 (OEP05–2), Boston, MA 02109–3912, telephone number (617) 918–1656, fax number (617) 918–0656, e-mail *lancey.susan@epa.gov.*

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

Organization of this document. The following outline is provided to aid in locating information in this preamble.

I. Background and Purpose

Under CAA section 112(l), EPA may approve state or local rules or programs to be implemented and enforced in place of certain otherwise applicable Federal rules, emissions standards, or requirements. The Federal regulations governing EPA's approval of state and local rules or programs under section 112(l) are located at 40 CFR part 63, subpart E. *See* 58 FR 62262 (November 26, 1993), as amended by 65 FR 55810 (September 14, 2000). Under these regulations, a state air pollution control agency has the option to request EPA's approval to substitute a state rule for the applicable Federal rule (*e.g.,* the National Emission Standards for Hazardous Air Pollutants). Upon approval by EPA, the state agency is authorized to implement and enforce its rule in place of the Federal rule.

EPA promulgated the Dry Cleaning NESHAP on September 22, 1993. *See* 58 FR 49354 (codified at 40 CFR part 63, subpart M, "National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities"). On August 12, 2003, EPA received ME DEP's request to implement and enforce "Chapter 125: Perchloroethylene Dry Cleaner Regulation" in lieu of the Dry Cleaning NESHAP as applied to area sources. On April 24, 2006, EPA approved the Maine Dry Cleaner Rule in place of the Dry Cleaning NESHAP for area sources pursuant to the provisions of 40 CFR part 63, subpart E. *See* 71 FR 20895.

Under 40 CFR 63.91(e)(3), if EPA amends or otherwise revises a promulgated CAA section 112 rule or requirement in a way that increases its stringency, EPA will notify any state with a delegated alternative of the need to revise its equivalency demonstration. EPA will consult with the state to set a time frame for the state to submit a revised equivalency demonstration. EPA will then review and approve the revised equivalency demonstration according to the procedures in 40 CFR part 63, subpart E. More stringent NESHAP amendments to a delegated alternative apply to all sources until EPA determines that the approved or revised alternative requirements are equivalent to the more stringent amendments.

On July 27, 2006, September 21, 2006 and July 11, 2008, EPA promulgated amendments to the Dry Cleaning NESHAP. *See* 71 FR 42724, 71 FR 55280 and 73 FR 39871. In a letter dated October 25, 2006, EPA notified ME DEP that EPA had published more stringent amendments to the Dry Cleaning NESHAP and of the need for ME DEP to revise its equivalency demonstration. Accordingly, ME DEP revised the Maine Dry Cleaner Rule with an effective date of June 24, 2009. On December 11, 2009, ME DEP submitted a request for approval to implement and enforce the amended Maine Dry Cleaner Rule in place of the amended Dry Cleaning NESHAP. On March 4, 2010, EPA determined that Maine's submittal was complete. As explained below, EPA has reviewed the State's submission and determined that the amended Maine Dry Cleaner Rule is no less stringent than the amended Dry Cleaning NESHAP, as applied to area sources.

In addition, in the **Federal Register** on May 13, 2009, EPA corrected a sequential numbering error in 40 CFR 63.99. *See* 74 FR 22437. In this rulemaking, paragraph (a)(19) of section 63.99, the subparagraph for the state of Maine, was redesignated as paragraph (a)(20). However, the reference to paragraph (a)(19)(iii) in the incorporation by reference section 63.14(d)(6) was not corrected to refer to paragraph (a)(20)(iii) at that time. Therefore, today's notice also corrects the reference in 40 CFR 63.14(d)(6) to appropriately refer to paragraph (a)(20)(iii).

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

II. What requirements must a State rule meet to substitute for a section 112 rule?

A state must demonstrate that it has satisfied the general delegation/approval criteria contained in 40 CFR 63.91(d). The process of providing "up-front approval" assures that a state has met the delegation criteria in Section 112(l)(5) of the CAA (as codified in 40 CFR 63.91(d)), that is, that the state has demonstrated that its NESHAP program contains adequate authorities to assure compliance with each applicable Federal requirement, adequate resources for implementation, and an expeditious compliance schedule. Under 40 CFR 63.91(d)(3), interim or final Title V program approval satisfies the criteria set forth in 40 CFR 63.91(d) for "up-front approval." On October 18, 2001, EPA promulgated full approval of ME DEP's operating permits program with an effective date of December 17, 2001. *See* 66 FR 52874. Accordingly, ME DEP has satisfied the up-front approval criteria of 40 CFR 63.91(d).

Additionally, the "rule substitution" option requires EPA to make a detailed and thorough evaluation of the state's submittal to ensure that it meets the stringency and other requirements of 40 CFR 63.93. A rule will be approved if the state or local government demonstrates: (1) the state and local rules contain applicability criteria that are no less stringent than the corresponding Federal rule; (2) the state and local rule requires levels of control and compliance and enforcement measures that would achieve emission reductions from each affected source that are no less stringent than would result from the otherwise applicable Federal standard; (3) the schedule for implementation and compliance is consistent with the deadlines established in the otherwise applicable Federal rule; and (4) the state requirements include additional compliance and enforcement measures as specified in 40 CFR 63.93(b)(4). *See* 40 CFR 63.93(b). After reviewing ME DEP's amended partial rule substitution request and equivalency demonstration for the Dry Cleaning NESHAP as it applies to area sources, EPA has determined this request meets all the requirements necessary for approval under CAA section 112(l) and 40 CFR 63.91 and 63.93.

III. How will EPA determine equivalency for state alternative NESHAP requirements?

Before we can approve alternative requirements in place of a part 63 emissions standard, the state must

submit to us detailed information that demonstrates how the alternative requirements compare with the otherwise applicable Federal standard. Under 40 CFR part 63 subpart E, the level of control in the state rule must be at least as stringent as the level of control in the Federal rule. In addition, in order for equivalency to be granted, the level of control and compliance and enforcement measures ("MRR") of the state rule, taken together as a whole, must be equivalent to the level of control and MRR of the Federal rule, taken together as a whole. A detailed discussion of how EPA will determine equivalency for state alternative NESHAP requirements is provided in the preamble to EPA's proposed Subpart E amendments on January 12, 1999. *See* 64 FR 1908.

IV. What significant changes did EPA make to the Dry Cleaning NESHAP and how did ME DEP address those changes?

The following discussion explains the changes that EPA made to the Dry Cleaning NESHAP and how ME DEP addressed these changes in the amended Maine Dry Cleaner Rule. The April 24, 2006 **Federal Register** Notice initially approving the Maine Dry Cleaner Rule as a substitute for the Dry Cleaning NESHAP contains a more detailed discussion of the differences between the Dry Cleaning NESHAP and the Maine Dry Cleaner Rule. *See* 71 FR 20895.

A. What definitions were added to the Dry Cleaning NESHAP and the amended Maine Dry Cleaner Rule?

The Dry Cleaning NESHAP added definitions for halogenated hydrocarbon detector, perchloroethylene gas analyzer, residence, vapor leak, and vapor barrier. The amended Maine Dry Cleaner Rule adopted the same definitions, with the exception of vapor barrier and residence. Residence is defined in the Dry Cleaner NESHAP as any dwelling or housing in which people reside, excluding short-term housing that is occupied by the same person for a period of less than 180 days (such as a hotel room). Maine's amended Dry Cleaner Rule defines residence as "any dwelling or housing in which people reside," without exclusion for short-term housing. Maine's definition is more stringent. ME DEP did not adopt the definition of vapor barrier into its amended Maine Dry Cleaner Rule because the requirement is no longer necessary. Specifically, the amended Maine Dry Cleaner Rule specifies that dry cleaning machines installed in a building with a residence after December 21, 2005 must comply with the NESHAP provisions under Section 63.320(b)(2)(ii). See Chapter 125 Section 3.A.(2). Section 63.320(b)(2)(ii) of the Dry Cleaner NESHAP requires any facility installed in a building with a residence between December 21, 2005 and July 13, 2006 (*i.e.,* those facilities which were required to utilize a vapor barrier under the Dry Cleaning NESHAP) to eliminate perc emissions by July 27, 2009. Therefore, any facility which was required to install a vapor barrier is effectively prohibited from operating under the Dry Cleaner NESHAP and the amended Maine Dry Cleaner Rule as of July 27, 2009. The amended Maine Dry Cleaner Rule is equivalent to the Dry Cleaner NESHAP.

B. What control requirements were added for new dry cleaners installed after December 21, 2005?

The Dry Cleaning NESHAP requires new area source dry cleaners which commence construction after December 21, 2005, to be equipped with a refrigerated condenser and a non-vented carbon adsorber. The carbon adsorber must be desorbed in accordance with the manufacturer's instruction. *See* 40 CFR 63.322(o)(2). The amended Maine Dry Cleaner Rule required these control requirements for new dry cleaners installed after February 12, 1997 and added clarifying language for these controls on new dry cleaners installed after December 21, 2005. See Chapter 125 Section 3.B(2) and Section 3.(C)(3). The Maine Dry Cleaner Rule added the requirement for the carbon adsorber to be desorbed in accordance with the manufacturer's instructions. *See* Chapter 125 Section 3.C(1)(a). The amended Maine Dry Cleaner Rule is accordingly no less stringent than the corresponding Federal rule.

C. What requirements were added for dry cleaners installed in a building with a residence after December 21, 2005?

The Dry Cleaning NESHAP requires a vapor barrier and other control requirements for dry cleaners installed in a building with a residence between December 21, 2005 and July 13, 2006. The Dry Cleaning NESHAP requires that such dry cleaners eliminate perc emissions by July 27, 2009. *See* 40 CFR 63.322(o)(5)(i)–(ii) and 63.320(b)(2)(ii). The Maine Dry Cleaner Rule specifies that such dry cleaners must comply with the Dry Cleaner NESHAP Section 63.320(b)(2)(ii). *See* Chapter 125 Section 3.A(2). Under both the Dry Cleaning NESHAP and the amended Maine Dry Cleaner Rule, such sources are effectively prohibited from operating as of July 27, 2009. The Maine Dry Cleaner rule is equivalent to the Dry Cleaning NESHAP.

The Dry Cleaning NESHAP does not allow any dry cleaning systems to be installed in a building with a residence as of July 13, 2006. *See* 40 CFR 63.322(o)(4) and 63.320(b)(3). The amended Maine Dry Cleaner rule prohibits the installation of a dry cleaner co-located with a residence as of June 24, 2009, and requires all new or relocated dry cleaning machines located in a building with a residence which commenced construction on or after December 21, 2005 to comply with 40 CFR Part 63.320(b)(2)(ii). *See* Chapter 125 Section 3.A(1) and (2). The amended Maine Dry Cleaner rule does not prohibit dry cleaning machines from being installed in a building with a residence between July 13, 2006 and June 24, 2009, the effective date of the amended Maine Dry Cleaner rule. Therefore, EPA is retaining its authority with respect to dry cleaners installed in a residence between July 13, 2006 and June 24, 2009, the effective date of the amended Maine Dry Cleaner rule. In addition, the amended Maine Dry Cleaner rule prohibits the installation of a co-located dry cleaner as of June 24, 2009. *See* Chapter 125 Section 3.(A)(1). A co-located dry cleaner includes dry cleaning facilities located in a building with a residence, or with a day care center, a health care facility, a prison, an elementary school, a middle or high school or a pre-school, a senior center or a youth center, or other facility inhabited by children or the elderly. Therefore, this provision of the amended Maine Dry Cleaner rule is more stringent than the Dry Cleaning NESHAP because it prohibits all co-located dry cleaners as of June 24, 2009, in addition to prohibiting co-located dry cleaners in a building with a residence as of June 24, 2009.

The Dry Cleaning NESHAP requires all dry cleaners located in a building with a residence to eliminate perc emissions by December 21, 2020. *See* 40 CFR 63.322(o)(5)(ii). The amended Maine Dry Cleaner rule requires all co-located dry cleaners to cease operation on or before December 21, 2020. *See* Chapter 125 Section 3.A(3). The amended Maine Dry Cleaner rule is more stringent than the Dry Cleaning NESHAP because this provision applies to all co-located facilities in addition to dry cleaners installed in a building with a residence.

D. What requirements were added for transfer machines?

The Dry Cleaning NESHAP effectively prohibits all transfer machines as of July 28, 2008, by requiring the owner or

operator to eliminate emissions of perc during the transfer of articles between the washer and the dryer(s) or reclaimer(s). *See* 40 CFR 63.320(b)(1)) and 63.322(o)(4). The amended Maine Dry Cleaner rule prohibited the installation and use of transfer machines as of January 4, 2003. *See* Chapter 125 Section 3.(D). The amended Maine Dry Cleaner rule is more stringent because it prohibited transfer machines earlier than the Dry Cleaning NESHAP.

E. What monitoring requirements were added?

The Dry Cleaning NESHAP added a requirement for area source dry cleaners to conduct leak checks monthly using a halogenated hydrocarbon detector or a PCE gas analyzer that is operated according to the manufacturer's recommendation. *See* 40 CFR 63.322(o)(1). The amended Maine Dry Cleaner rule requires vapor leak checks weekly with a halogenated hydrocarbon detector or a PCE gas analyzer. *See* Chapter 125 Section 4.(C)(2). The amended Maine Dry Cleaner rule is more stringent than the Dry Cleaning NESHAP because it requires leak checks with a detector or analyzer to be conducted weekly.

The Dry Cleaning NESHAP added a requirement that allows facilities using a refrigerated condenser to monitor the refrigeration system high pressure and low pressure as an alternative to monitoring for the temperature of the perc vapor gas vapor-stream. *See* 40 CFR 63.323(a)(1). Maine added this requirement and is therefore equivalent to the Dry Cleaning NESHAP. *See* Chapter 125 Section 4.(B).

F. How did the reporting requirements change?

The Dry Cleaning NESHAP added a requirement for facilities to submit a notification of compliance status by July 28, 2008. *See* 40 CFR 63.324(f). The amended Maine Dry Cleaner rule did not add this requirement but all affected sources were required under the NESHAP to submit this report and the date for submitting the report was prior to the effective date of the Maine Dry Cleaner rule amendments. ME DEP did develop a sample form for the July 28, 2008, NESHAP report and sent a direct mailing to every dry cleaner in the state with the form, notifying sources to submit the report to both EPA and ME DEP. In addition, the amended Maine Dry Cleaner rule requires facilities to register annually with the state. The Dry Cleaning NESHAP does not require an annual report. The annual report was revised to include all of the information required in the July 28, 2008, NESHAP report, except for a statement of compliance. Given that the NESHAP report date has passed, all dry cleaners in Maine were required to send in the report with a statement of compliance under the NESHAP requirements, and that Maine requires an annual report not required by the NESHAP, EPA has determined that reporting requirements of the amended Maine Dry Cleaner rule are equivalent to the requirements of the Dry Cleaning NESHAP.

V. What is EPA's action regarding Maine's amended Dry Cleaner Rule?

After reviewing ME DEP's request for approval of the amended Maine Dry Cleaner Rule, EPA has determined that Maine's regulation meets all of the requirements necessary for partial rule substitution under section 112(l) of the CAA and 40 CFR 63.91 and 63.93. The amended Maine Dry Cleaner rule, taken as a whole, is no less stringent than the Dry Cleaning NESHAP, as applied to area sources. Therefore, EPA hereby approves ME DEP's request to implement and enforce Chapter 125, as amended on June 24, 2009, in place of the Dry Cleaning NESHAP for area sources in Maine. EPA retains the requirements for major source dry cleaners and dry cleaners installed in a residence between July 13, 2006 and June 24, 2009. As of the effective date of this action, the amended Maine Dry Cleaner Rule is enforceable by EPA and by citizens under the CAA. Although ME DEP has primary responsibility to implement and enforce the amended Maine Dry Cleaner rule, EPA retains the authority to enforce any requirement of the rule upon its approval under CAA 112. *See* CAA section 112(l)(7).

VI. Final Action

EPA is approving the Maine Perchloroethylene Dry Cleaner Regulation, Chapter 125, as amended on June 24, 2009, as a partial rule substitution for the Dry Cleaning NESHAP for area sources in Maine. EPA retains the requirements for major source dry cleaners and dry cleaners installed in a residence between July 13, 2006 and June 24, 2009.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the rule revision should relevant adverse comments be filed. This rule will be effective July 25, 2011 without further notice unless the Agency receives relevant adverse comments by June 27, 2011.

If EPA receives such comments, then EPA will publish a notice withdrawing the direct final rule and informing the public that the direct final rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on the proposed rule. All parties interested in commenting on the proposed rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on July 25, 2011 and no further action will be taken on the proposed rule. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule, and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

VII. Judicial Review

Under CAA section 307(b)(1), judicial review of this final rule is available only by filing a petition for review in the United States Court of Appeals for the appropriate circuit by July 25, 2011. Under CAA section 307(b)(2), 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.

Section 307(d)(7)(B) of the CAA further provides that "[o]nly an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review." This section also provides a mechanism for us to convene a proceeding for reconsideration, "[i]f the person raising an objection can demonstrate to the 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 Regional Administrator, U.S. Environmental Protection Agency, EPA New England Regional Office, Five Post Office Square, Suite 100 (ORA01–4), Boston, MA 02109–3912, with a copy to the person(s) listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Regional Counsel, U.S.

Environmental Protection Agency, EPA New England Regional Office, Five Post Office Square, Suite 100 (ORA01–4), Boston, MA 02109–3912. Filing a petition for reconsideration by the Administrator of this final rule under CAA section 307(d)(7)(B) does not affect the finality of this rule for the purposes of judicial review, does not extend the time within which a petition for judicial review may be filed, and does not postpone the effectiveness of the rule.

VIII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This action approves equivalent state requirements in place of Federal requirements under CAA section 112(l). This type of action is exempt from review under EO 12866.

B. Paperwork Reduction Act

This 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 action allows the State of Maine to implement equivalent state requirements *in lieu of* pre-existing Federal requirements as applied only to area source dry cleaners. Thus, this action does not require any person to submit information.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business that meets the Small Business Administration size standards found at 13 CFR 121.201 (coin operated laundries and drycleaners as defined by NAICS code 812310 with annual receipts of less than $7.0 million or drycleaning and laundry services (except coin operated) as defined by NAICS code 812320 with annual receipts of less than $4.5 million); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This final rule will not have a significant impact on a substantial number of small entities because approvals under CAA section 112(l) and 40 CFR 63.93 do not create any new requirements. Such approvals simply allow a state to implement and enforce equivalent requirements in place of the Federal requirements that EPA is already imposing.

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or Tribal governments or the private sector. The action imposes no enforceable duty on any State, local or Tribal governments or the private sector. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA. This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This action allows the State of Maine to implement equivalent state requirements *in lieu of* pre-existing Federal requirements as applied only to area source dry cleaners. Thus, this action does not significantly or uniquely affect small governments.

E. Executive Order 13132: Federalism

This action 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 action simply allows Maine to implement equivalent alternative requirements to replace a Federal rule, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, Executive Order 13132 does not apply to this action.

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). This action allows the State of Maine to implement equivalent state requirements *in lieu of* pre-existing Federal requirements as applied only to area source dry cleaners. This action will not have substantial direct effects on Tribal governments, on the relationship between the Federal government and Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it approves a state program such that it allows the State of Maine to implement equivalent state requirements *in lieu of* pre-existing Federal requirements as applied only to area source dry cleaners.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this 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 action allows the State of Maine to implement equivalent state requirements *in lieu of* pre-existing Federal requirements as applied only to area source dry cleaners. As explained above, the state requirements contain standards that are at least equivalent to the Federal standards; thus, we anticipate only a positive impact from this action.

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 the Congress and to the Comptroller General of the United States. EPA will submit a report containing this 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 the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective July 25, 2011.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of section 112 of the Clean Air Act, as amended, 42 U.S.C. 7412.

Dated: May 13, 2011.

Ira W. Leighton,

Acting Regional Administrator, EPA New England.

40 CFR part 63 is amended as follows:

PART 63—[AMENDED]

■ 1. The authority citation for part 63 continues to read as follows:

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

Subpart A—[Amended]

■ 2. Section 63.14 is amended by revising paragraph (d)(6) to read as follows:

§ 63.14 Incorporation by reference.

(d) * * *

(6) Maine Department of Environmental Protection regulations at Chapter 125, Perchloroethylene Dry Cleaner Regulation, effective as of June 2, 1991, last amended on June 24, 2009. Incorporation By Reference approved for § 63.99(a)(20)(iii) of subpart E of this part.

* * * * *

Subpart E—[Amended]

■ 3. Section 63.99 is amended by revising paragraph (a)(20)(iii) to read as follows:

§ 63.99 Delegated Federal authorities.

(a) * * *

(20) * * *

(iii) Affected area sources within Maine must comply with the Maine Regulations Applicable to Hazardous Air Pollutants (incorporated by reference as specified in § 63.14) as described in paragraph (a)(20)(iii)(A) of this section:

(A) The material incorporated into the Maine Department of Environmental Protection regulations at Chapter 125, Perchloroethylene Dry Cleaner Regulation, effective as of June 2, 1991, last amended on June 24, 2009, pertaining to dry cleaning facilities in the State of Maine jurisdiction, and approved under the procedures in § 63.93 to be implemented and enforced in place of the Federal NESHAP for Perchloroethylene Dry Cleaning Facilities (subpart M of this part), effective as of July 11, 2008, for area sources only, as defined in § 63.320(h).

(*1*) Authorities not delegated.

(*i*) Maine is not delegated the Administrator's authority to implement and enforce Maine regulations at Chapter 125, in lieu of those provisions of subpart M of this part which apply to major sources, as defined in § 63.320(g).

(*ii*) Maine is not delegated the Administrator's authority to implement and enforce Maine regulations at Chapter 125, in lieu of those provisions of subpart M of this part which apply to dry cleaning systems installed in a building with a residence between July 13, 2006 and June 24, 2009, as defined in § 63.320(b)(2)(i) and § 63.322(o)(4).

(*2*) [Reserved]

(B) [Reserved]

* * * * *

[FR Doc. 2011–13003 Filed 5–25–11; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Part 102–42

[FMR Change 2011–01; FMR Case 2011–102–1; Docket 2011–0008; Sequence 1]

RIN 3090–AJ12

Federal Management Regulation; Change in Consumer Price Index Minimal Value

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Final rule.

SUMMARY: Pursuant to 5 U.S.C. 7342, at three-year intervals following January 1, 1981, the minimal value for foreign gifts must be redefined by the Administrator of General Services, after consultation with the Secretary of State, to reflect changes in the Consumer Price Index for the immediately preceding 3-year period. The required consultation has been completed and the minimal value has been increased to $350 or less as of January 1, 2011.

DATES: *Effective Date:* This final rule is effective May 26, 2011.

Applicability Date: This final rule applies to all foreign gifts received on or after January 1, 2011.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Holcombe, Director, Asset Management Policy Division (202–501–3828).

SUPPLEMENTARY INFORMATION:

A. Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct 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). Executive Order 13563

emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. 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.

B. Regulatory Flexibility Act

This final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the revisions are not considered substantive. This final rule is also exempt from the Regulatory Flexibility Act per 5 U.S.C. 553(a)(2) because it applies to agency management and public property. However, this final rule is being published to provide transparency in the promulgation of Federal policies.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this final rule does not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501–3520.

D. Small Business Reform Act

This final rule is also exempt from congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Part 102–42

Government property management.

Dated: March 14, 2011.

Martha Johnson,

Administrator.

For the reasons set forth in the preamble, 41 CFR part 102–42 is amended as follows:

PART 102–42—UTILIZATION, DONATION, AND DISPOSAL OF FOREIGN GIFTS AND DECORATIONS

■ 1. The authority citation for part 102–42 continues to read as follows:

Authority: 40 U.S.C. 121(c) and 5 U.S.C. 7342.

§ 102–42.10 [Amended]

■ 2. Amend § 102–42.10, in the definition of "Minimal value," in the first sentence, by replacing "$335" with "$350".

[FR Doc. 2011–13028 Filed 5–25–11; 8:45 am]

BILLING CODE 6820–14–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[GC Docket No. 10–43; FCC 11–11]

Commission's Ex Parte Rules and Other Procedural Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: The Federal Communications Commission published a document in the **Federal Register** at 76 FR 24376, May 2, 2011, which contained information collection requirements. The Office of Management and Budget (OMB) gave approval on May 16, 2011, for these information collection requirements contained in the Commission's Report and Order, Amendment of the Commission's *Ex Parte* Rules and Other Procedural Rules.

DATES: The amendments to §§ 1.1206(b) and 1.1208 that appeared in the **Federal Register** at 76 FR 24376 on May 2, 2011 as approved by OMB are effective June 1, 2011.

FOR FURTHER INFORMATION CONTACT: Joel Kaufman, 202–418–1758.

SUPPLEMENTARY INFORMATION: The Federal Communications Commission has received OMB approval for the *ex parte* rules and other procedural rules contained in information collection OMB Control No: 3060–0430, Section 1.1206, Permit-but-Disclose Proceedings. The information collection was revised in the Report and Order and Further Notice of Proposed Rulemaking in CG Docket No. 10–43 which appears at 76 FR 24376, May 2, 2011. The effective date of the rules adopted in that Order was published as June 1, 2011, except for §§ 1.1206(b) and 1.1208, which contain new or modified information collection requirements that would not be effective until approved by the Office of Management and Budget. Through this document, the Commission announces that it has received this approval (OMB Control No. 3060–0430, Expiration Date: November 30, 2011) and that §§ 1.1206(b) and 1.1208 are effective on June 1, 2011.

Pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13, an agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. Notwithstanding any other provisions of law, no person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Questions concerning the OMB control numbers and expiration dates should be directed to Leslie F. Smith, Federal Communications Commission, (202) 418–0217, or via the Internet at *Leslie.Smith@fcc.gov.*

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2011–12994 Filed 5–25–11; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Part 178

Specifications for Packagings

CFR Correction

In Title 49 of the Code of Federal Regulations, Parts 100 to 185, revised as of October 1, 2010, on page 1026, in § 178.601, paragraph (l) is reinstated to read as follows:

§ 178.601 General requirements.

* * * * *

(l) *Record retention.* Following each design qualification test and each periodic retest on a packaging, a test report must be prepared. The test report must be maintained at each location where the packaging is manufactured and each location where the design qualification tests are conducted, for as long as the packaging is produced and for at least two years thereafter, and at each location where the periodic retests are conducted until such tests are successfully performed again and a new test report produced. In addition, a copy of the test report must be maintained by a person certifying compliance with this part. The test report must be made available to a user of a packaging or a representative of the Department upon request. The test report, at a minimum, must contain the following information:

(1) Name and address of test facility;

(2) Name and address of applicant (where appropriate);

(3) A unique test report identification;

(4) Date of the test report;

(5) Manufacturer of the packaging;

(6) Description of the packaging design type (*e.g.* dimensions, materials, closures, thickness, *etc.*), including methods of manufacture (*e.g.* blow molding) and which may include drawing(s) and/or photograph(s);

(7) Maximum capacity;

(8) Characteristics of test contents, *e.g.* viscosity and relative density for liquids and particle size for solids;

(9) Test descriptions and results; and

(10) Signed with the name and title of signatory.

[FR Doc. 2011–13183 Filed 5–25–11; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 218

[Docket No. 110516281–1283–01]

RIN 0648–BB03

Taking and Importing Marine Mammals: U.S. Navy Training in the Virginia Capes Range Complex and Jacksonville Range Complex

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

ACTION: Interim final rule; request for comments.

SUMMARY: In June 2009, pursuant to the Marine Mammal Protection Act (MMPA), NMFS issued two 5-year final regulations to govern the unintentional taking of marine mammals incidental to Navy training activities conducted in the Virginia Capes (VACAPES) and Jacksonville (JAX) range complexes off the East Coast of the U.S. These regulations, which allow for the issuance of "Letters of Authorization" (LOAs) for the incidental take of marine mammals during the specified activities and described timeframes, prescribe the permissible methods of taking and other means of effecting the least practicable adverse impact on marine mammal species or stocks and their habitat, as well as requirements pertaining to the monitoring and reporting of such taking.

These rules quantify the specific amounts of training activities involving underwater detonations that will occur over the course of the 5-year rules, and indicate that marine mammal take may only be authorized in an LOA incidental to the types and amounts of training activities and explosives described. No language was included expressly allowing for deviation from those precise levels of training activities and amounts of explosives even if the total number of takes remain within the analyzed and authorized limits. Since the issuance of these rules, the Navy realized that their evolving training programs, which are linked to real world events, necessitate greater flexibility in the types and amounts of training events and explosives that they conduct and use. In response to this need, NMFS has, through this interim final rule, amended the VACAPES and JAX regulations to explicitly allow for greater flexibility in the types and amount of training activities that they conduct and explosives that they use.

DATES: Effective on May 24, 2011. Comments and information must be received no later than June 27, 2011.

ADDRESSES: You may submit comments, identified by 0648–BB03, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov*
- Hand delivery or mailing of paper, disk, or CD–ROM comments should be addressed to Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225.

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). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

A copy of the Navy's applications, NMFS' Records of Decision (RODs), NMFS' proposed and final rules and subsequent LOAs, and other documents cited herein may be obtained by writing to Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225 or by telephone via the contact listed here (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Shane Guan, Office of Protected Resources, NMFS, (301) 713–2289, ext. 137.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) during periods of not more than five consecutive years each if certain findings are made and regulations are issued or, if the taking is limited to harassment, notice of a proposed authorization is provided to the public for review.

Authorization shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such taking are set forth.

NMFS has defined "negligible impact" in 50 CFR 216.103 as:

> an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

The definition of "harassment" as it applies to a "military readiness activity" is as follows (section 3(18)(B) of the MMPA as amended by the National Defense Authorization Act (NDAA) (Pub. L. 108–136)):

> (i) any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild [Level A Harassment]; or
>
> (ii) any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered [Level B Harassment].

Summary of the Modification

In June, 2009, NMFS issued 5-year regulations governing the taking of marine mammals incidental to training activities conducted in the VACAPES Range Complex (74 FR 28328; June 15, 2009) and the JAX Range Complex (74 FR 28349; June 15, 2009) (collectively the "2009 Final Rules"). The VACAPES and JAX Range Complex regulations allow for the issuance of LOAs that authorize the incidental take of marine mammals during the specified activities and described timeframes, and prescribe the permissible methods of taking and other means of effecting the least practicable adverse impact on marine mammal species or stocks and their habitat, as well as requirements pertaining to the monitoring and

reporting of such taking. These regulations were drafted in such a way that the Navy's specified activities were strictly quantified by the amount of each type of training event to be carried out and the amount of explosives and sound sources to be used (*e.g.,* number of events or explosive detonations) over the course of the 5-year regulations.

After the issuance of these rules, the Navy realized that their evolving training programs, which are linked to real world events, necessitate greater flexibility in both the types and amount of training activities that they conduct and the types and amount of underwater detonations and sound sources that they use.

Regarding the types of training events and explosives for which incidental take is authorized, in some cases, the Navy's VACAPES and JAX Range Complex rules identified the most representative or highest power source to represent a group of known similar activities or explosive types. However, the Navy regularly modifies or improves training techniques, often in the way that results in the use of explosive munitions are similar to, but not exactly the same as, existing ones. In its LOA renewal requests submitted to NMFS on January 19, 2011, the Navy requested modification in the amount and types of training activities and the explosives involved for the VACAPES and JAX range complexes. To address this issue, NMFS modifies the 2009 Final Rules to increase the flexibility of the Navy's takings prescriptions by inserting language that will explicitly allow for authorization of take incidental to the previously identified specified explosives or "similar events or explosives" (with similar characteristics that do not change any of the underlying analyses), and in the case of the JAX Range Complex, by allowing FIREX exercises to be conducted in areas similar to those initially specifically identified in the rule (areas BB and CC), provided that the implementation of these changes in annual LOAs does not result in exceeding the incidental take analyzed and identified in the 2009 Final Rules.

Regarding amounts of explosive and number of training activities, the 2009 Final Rules only allow for the authorization of take incidental to a 5-yr maximum amount of use for each specific training activity type and explosive type, even though no change in the environmental impacts would be expected by modifying the amounts of explosives being used in a training event in certain ways. For example, a large number of smaller explosives being used would yield similar impacts to the marine environment as a few larger explosives. To address this issue, NMFS modifies the VACAPES and JAX 2009 Final Rules to increase flexibility by including language that allows for inter-annual variability in the amount of training activities and the number and types of explosives that can be authorized in each annual LOA (e.g., one year the Navy could use a lot of one explosive, and little of another, and the next year those amounts could be reversed), provided it does not result in exceeding the total level of incidental take analyzed and identified in the 2009 Final Rules, and the taking does not result in more than a negligible impact on affected species or stocks.

As indicated above, these regulatory amendments do not change the analyses of marine mammal impacts conducted in the 2009 Final Rules. This fact is assured and illustrated through: (1) The Navy's annual submission of LOA applications for each area, which include take estimates specific to the upcoming year's activities (*i.e.,* explosive use); (2) their subsequent annual submission of exercise reports, which accurately report the specific amount of use for each explosive and the number of training events conducted over the course of the previous year; and (3) their annual submission of monitoring reports, which describe observed responses of marine mammals to Navy's training activities and the use of explosives collected via visual or passive acoustic methods. Together, these submissions allow NMFS to accurately predict and track the Navy's activities to ensure that both NMFS' annual LOAs, and the impacts of the Navy's activities on marine mammals, remain within what is analyzed and allowed by the VACAPES and JAX 5-year regulations.

Classification

Pursuant to the procedures established to implement section 6 of Executive Order 12866, the Office of Management and Budget has determined that this final rule is not significant.

Pursuant to 5 U.S.C. 553, there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest. The 2009 VACAPES and JAX Final Rules established a framework whereby a total number of marine mammals, by species, could be taken incidental to certain military readiness activities during the 5-year period. These rules also enumerated levels of activity for each type of training activity and explosive, but did not include language expressly authorizing deviation from those precise levels if the total number of takes remained within authorized limits. Although the Navy used the best available information and professional judgment to estimate the level of individual activities planned for the ranges, evolving unforeseen real world requirements, and the evolving training and readiness tactics and procedures needed to meet those requirements, necessitate annual flexibility to offset increases in some activities with decreases in others. The Navy requires the flexibility to modify its training activities and the use of certain explosive detonations in the VACAPES and JAX Range Complexes, and these regulations modify the VACAPES and JAX final rules to insert language codifying that flexibility.

The Navy has a compelling need to continue its currently on-going military readiness and testing activities with the specific sound sources at issue without interruption. In 10 U.S.C. 5062, Congress mandated that the Chief of Naval Operations (CNO) man, organize, train, and equip all Naval forces for combat. To accomplish this, naval commands adhere to the Fleet Response Training Plan (FRTP). The FRTP is an arduous sequential training cycle in which unit level training (ULT) and certification is followed by a series of major exercises that bring together various components so they have the opportunity to train and practice as an integrated whole resulting in Major Combat Operation certification. This certification includes critically important anti-submarine warfare that requires training on the use and deployment of the described systems. Interruption or reduction of the Navy's ability to utilize specific sound sources during this period would significantly disrupt vital sequential training, certification, and testing activities essential to our national security and the safety of our armed forces. Therefore, allowing a public comment period for these rules is impracticable and contrary to the public's interest.

Because the requested modifications would not increase the total level of takes authorized in the 2009 Final Rules, the modifications would result in no increased impact to protected species.

For the same reasons above, there is good cause under 5 U.S.C. 553 to waive the 30-day delay in effectiveness. Interruption or reduction of the Navy's ability to utilize specific sound sources would significantly disrupt vital sequential training, certification, and testing activities essential to our national security and the safety of our

armed forces. Therefore, there is good cause to waive the 30-day delay in effectiveness and to make this rule effective immediately.

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* are inapplicable.

List of Subjects in 50 CFR Part 218

Exports, Fish, Imports, Incidental take, Indians, Labeling, Marine mammals, Navy, Penalties, Reporting and recordkeeping requirements, Seafood, Sonar, Transportation.

Dated: May 20, 2011.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR part 218 is amended as follows:

PART 218—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

■ 1. The authority citation for part 218 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

■ 2. In § 218.1, paragraphs (c) introductory text, (c)(1) introductory text, (c)(1)(i)(D), (c)(1)(ii) introductory text, and (d) are revised, and paragraph (e) is added to read as follows:

§ 218.1 Specified activity, and specified geographical area and effective dates.

* * * * *

(c) The taking of marine mammals by the Navy is only authorized if it occurs incidental to the following activities:

(1) The use of the explosive munitions, or similar explosive types, indicated in paragraph (c)(1)(i) of this section conducted as part of the Navy training events, or similar training events, indicated in paragraph (c)(1)(ii) of this section:

* * * * *

(i) * * *

(D) Airborne Mine Neutralization system (AMNS).

* * * * *

(ii) Training events (with approximated number of events)

* * * * *

(d) Regulations are effective June 5, 2011, through June 4, 2016.

(e) The taking of marine mammals may be authorized in an LOA for the explosive types and activities, or similar explosives or activities, listed in § 218.1(c) should the amounts (e.g., number of exercises) vary from those estimated in § 218.1(c), provided that the variation does not result in exceeding the amount of take indicated in § 218.2(c).

■ 3. In § 218.10, paragraphs (c) introductory text, (c)(1) introductory text, and (d) are revised, and paragraph (e) is added to read as follows:

§ 218.10 Specified activity and specified geographical area and effective dates

* * * * *

(c) The taking of marine mammals by the Navy is only authorized if it occurs incidental to the following activities:

(1) The use of the explosive munitions, or similar explosive types, indicated in paragraph (c)(1)(i) of this section conducted as part of the Navy training events, or similar training events, indicated in paragraph (c)(1)(ii) of this section:

* * * * *

(d) Regulations are effective June 5, 2011, through June 4, 2016.

(e) The taking of marine mammals may be authorized in an LOA for the explosive types and activities, or similar explosives and activities, listed in § 218.10(c) should the amounts (e.g., number of exercises) vary from those estimated in § 218.10(c), provided that the variation does not result in exceeding the amount of take indicated in § 218.11(c).

■ 4. In § 218.13, paragraph (a)(4)(i)(A) is revised to read as follows:

§ 218.13 Mitigation.

* * * * *

(a) * * *

(4) * * *

(i) * * *

(A) This activity shall only occur in Areas BB and CC, or in similar areas that will not result in marine mammal takes exceeding the amount indicated in § 216.11(c).

* * * * *

[FR Doc. 2011–12984 Filed 5–24–11; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 0907151138–1235–03]

RIN 0648–AY03

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Queen Conch Fishery of Puerto Rico and the U.S. Virgin Islands; Queen Conch Management Measures

Correction

In rule document 2011–10446 appearing on pages 23907–23909 in the issue of Friday, April 29, 2011, make the following correction:

§ 622.32 [Corrected]

On page 23908, in the third column, in § 622.32(b)(1)(iv), in the fourth line "64E34′ W." should read "64°34′ W.".

[FR Doc. C1–2011–10446 Filed 5–25–11; 8:45 am]

BILLING CODE 1505–01–D

Proposed Rules

Federal Register
Vol. 76, No. 102
Thursday, May 26, 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 ENERGY

10 CFR Part 430

[Docket No. EERE–2009–BT–TP–0004]

RIN 1904–AB94

Energy Conservation Program for Consumer Products: Test Procedures for Residential Central Air Conditioners and Heat Pumps

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Supplemental notice of proposed rulemaking; reopening the public comment period.

SUMMARY: This document announces a reopening of the time period for submitting comments on the supplemental notice of proposed rulemaking (SNOPR) to further amend DOE's proposed amendments to its test procedures for residential central air conditioners and heat pumps released in a June 2010 notice of proposed rulemaking (NOPR). The comment period closed on May 2, 2011. The comment period is reopened from May 26, 2011 until June 9, 2011.

DATES: Comments, data, and information relevant to the SNOPR to amend DOE test procedures for residential central air conditioners and heat pumps will be accepted until June 9, 2011.

ADDRESSES: Interested parties may submit comments, identified by docket number EERE–2009–BT–TP–0004 or Regulation Identifier Number (RIN) 1904–AB94, by any of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

2. *E-mail: RCAC–HP–2009–TP–0004@ee.doe.gov.* Include the docket number EERE–2009–BT–TP–0004 and/or RIN 1904–AB94 in the subject line of the message.

3. *Postal 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 a compact disc (CD), in which case it is not necessary to include printed copies. Otherwise, please submit one signed paper original.

4. *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 a CD, in which case it is not necessary to include printed copies. Otherwise, please submit one signed paper original.

Instructions: No telefacsimilies (faxes) will be accepted. All submissions must include the docket number or RIN for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see section 0, "Public Participation," of this document.

Docket: The docket is available for review at *http://www.regulations.gov,* including **Federal Register** notices, framework documents, public meetings attendee lists, transcripts, comments, and other supporting documents/materials. All documents in the docket are listed in the *http://www.regulations.gov* index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

A link to the docket Web page can be found at:

http://www1.eere.energy.gov/buildings/appliance_standards/residential/cac_heatpumps_new_rulemaking.html. This Web page will contain a link to the docket for this notice on the Web site *http://www.regulations.gov.* The *http://www.regulations.gov* Web page will contain simple instructions on how to access all documents, including public comments, in the docket. See section 0, "Public Participation," for information on how to submit comments through regulations.gov.

For further information on how to submit or review public comments 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. Wes Anderson, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–7335. E-mail: *Wes.Anderson@ee.doe.gov.*

Ms. Jennifer Tiedeman, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue, SW., Washington, DC 20585. Telephone: (202) 287–6111. E-mail: *Jennifer.Tiedeman@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

In an April 1, 2011 supplemental notice of proposed rulemaking (SNOPR), 76 FR 18105, the U.S. Department of Energy (DOE) proposed amendments to those it proposed to the DOE test procedures for residential central air conditioners and heat pumps released in a June 2010 notice of proposed rulemaking (NOPR). 75 FR 31224. The proposed amendments in the SNOPR would change the off-mode laboratory test steps and calculation algorithm to determine off-mode power consumption for residential central air conditioners and heat pumps, as well as change the requirements for selection and metering of the low-voltage transformer used when testing coil-only residential central air conditioners and heat pumps. Additionally, the amendments proposed in the SNOPR provided a method of calculation to determine the energy efficiency ratio (EER) during cooling mode steady-state tests for use as a regional metric. Finally, the SNOPR proposed amendments that would combine the two seasonal off-mode ratings of *P1* and *P2* for residential central air conditioners and heat pumps, as set forth in the June 2010 NOPR, to yield a single overall rating, PW_{OFF}. DOE opened a public comment period to receive comments, feedback, and other information regarding the SNOPR. The public comment period closed on May 2, 2011.

In a May 11, 2011, letter to DOE, after the close of the comment period, the Air-Conditioning, Heating, and Refrigeration Institute (AHRI) raised concerns regarding the proposals set forth in the SNOPR. The specific concerns raised by AHRI include that: (1) THE proposed off-mode test requirements are too complex; (2) the

proposed method for estimating off-mode hours is inaccurate; (3) the assumed outdoor temperature values for the shoulder season may be incorrect; (4) the proposed test procedures fails to measure power input to the crankcase heater; and (5) DOE has severely underestimated the cost of testing that would be incurred by manufacturers. (AHRI, No. 24.1 at pp. 1–2) [1]

Based on the number and scope of issues raised in the May 11, 2011, AHRI letter, DOE believes that reopening the comment period to allow additional time for interested parties to submit comments is appropriate. Therefore, DOE is reopening the comment period until June 9, 2011 to provide interested parties additional time to prepare and submit comments. DOE will accept comments received no later than June 9, 2011 and will consider any comments received between May 2, 2011 and June 9, 2011 to be timely filed.

II. Public Participation

A. Submission of Comments

DOE will accept comments, data, and other information regarding the SNOPR no later than the date provided in the DATES section at the beginning of this notice. 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 Web page 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 them online. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are 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. Pursuant 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).

Issued in Washington, DC on May 20, 2011.

Kathleen Hogan,

Deputy Assistant Secretary, Office of Technology Development, Energy Efficiency and Renewable Energy.

[FR Doc. 2011–13093 Filed 5–25–11; 8:45 am]

BILLING CODE 6450–01–P

[1] This indicates a written comment that was submitted in response to the April 2011 SNOPR and is included in the docket for this rulemaking. This particular comment refers to a comment (1) by AHRI, (2) in document number 24.1 in the public meeting support materials, and (3) appearing on pages 1–2.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 4, 5, 7, 8, 28, and 34

[Docket ID OCC–2011–0006]

RIN 1557–AD41

Office of Thrift Supervision Integration; Dodd-Frank Act Implementation

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is proposing to amend its regulations governing organization and functions, availability and release of information, and post-employment restrictions for senior examiners; and assessment of fees to incorporate the transfer of certain functions of the Office of Thrift Supervision (OTS) to the OCC pursuant to Title III of the Dodd-Frank Wall Street Reform and Consumer Protection Act. The OCC also is proposing amendments to its rules pertaining to change in control of credit card banks and trust banks to implement section 603 of the Act; deposit-taking by uninsured Federal branches to implement section 335 of the Act; and its preemption and visitorial powers rules, subpart D, to implement various sections of the Act.

DATES: Comments must be received on or before June 27, 2011.

ADDRESSES: Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by the Federal eRulemaking Portal or e-mail, if possible. Please use the title "OTS Integration; Dodd-Frank Act Implementation" to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal—"regulations.gov":* Go to *http://www.regulations.gov.* Select "Document Type" of "Proposed Rules," and in "Enter Keyword or ID Box," enter Docket ID "OCC–2011–0006" and click "Search." On "View By Relevance" tab at bottom of screen, in the "Agency" column, locate the Notice of Proposed Rulemakings for OCC, in the "Action" column, click on "Submit a Comment" or "Open Docket Folder" to submit or view public comments and to view supporting and related materials for this rulemaking action.
- Click on the "Help" tab on the Regulations.gov home page to get information on using Regulations.gov, including instructions for submitting or viewing public comments, viewing other supporting and related materials, and viewing the docket after the close of the comment period.
- *E-mail: regs.comments@occ.gov.*
- *Mail:* Office of the Comptroller of the Currency, 250 E Street, SW., Mail Stop 2–3, Washington, DC 20219.
- *Fax:* (202) 874–5274.
- *Hand Delivery/Courier:* 250 E Street, SW., Mail Stop 2–3, Washington, DC 20219.

Instructions: You must include "OCC" as the agency name and "Docket ID OCC–2011–0006" in your comment. In general, OCC will enter all comments received into the docket and publish them on the Regulations.gov Web site without change, including any business or personal information that you provide such as name and address information, e-mail addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this notice of proposed rulemaking by any of the following methods:

- *Viewing Comments Electronically:* Go to *http://www.regulations.gov.* Select "Document Type" of "Public Submissions," in "Enter Keyword or ID Box," enter Docket ID "OCC–2011–0006," and click "Search." Comments will be listed under "View By Relevance" tab at bottom of screen.
- *Viewing Comments Personally:* You may personally inspect and photocopy comments at the OCC, 250 E Street, SW., Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874–4700. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.
- *Docket:* You may also view or request available background documents and project summaries using the methods described above.

FOR FURTHER INFORMATION CONTACT: Andra Shuster, Special Counsel, Heidi Thomas, Special Counsel, or Stuart Feldstein, Director, Legislative and Regulatory Activities Division, (202) 874–5090; Timothy Ward, Deputy Comptroller for Thrift Supervision, (202) 874–4468; or Frank Vance, Manager, Disclosure Services and Administrative Operations, Communications Division, (202) 874–5378, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

I. Background

On July 21, 2010, President Barack Obama signed into law the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010) (Dodd-Frank Act or Act). As part of the comprehensive package of financial regulatory reform measures enacted, Title III of the Dodd-Frank Act transfers the powers, authorities, rights and duties of the Office of Thrift Supervision to other banking agencies, including the OCC, on the "transfer date." The transfer date is one year after the date of enactment of the Dodd-Frank Act, July 21, 2011 (unless extended in accordance with the provisions of the legislation). The Dodd-Frank Act also abolishes the OTS ninety days after the transfer date.

Title III of the Dodd-Frank Act transfers to the OCC all functions of the OTS and the Director of the OTS relating to Federal savings associations. As a result, the OCC will assume responsibility for the ongoing examination, supervision, and regulation of Federal savings associations.[1] The Act also transfers to the OCC rulemaking authority of the OTS relating to all savings associations, both state and Federal.[2] The legislation continues in effect all OTS orders, resolutions, determinations, agreements, regulations, interpretive rules, other interpretations, guidelines, procedures and other advisory materials in effect the day before the transfer date, and allows the OCC to enforce these issuances with respect to Federal savings associations, unless the OCC modifies, terminates, or sets aside such guidance or until superseded by the OCC, a court, or operation of law.[3] Title III also transfers OTS employees to either the OCC or FDIC, allocated as necessary to perform or support the OTS

[1] Title III transfers all functions of the OTS relating to state savings associations to the Federal Deposit Insurance Corporation (FDIC) and all functions relating to the supervision of any savings and loan holding company and nondepository institution subsidiaries of such holding companies, as well as rulemaking authority for savings and loan holding companies, to the Board of Governors of the Federal Reserve System (FRB). Dodd-Frank Act, section 312(b)(1) and (2)(A) (savings and loan holding companies) and (2)(C) (state savings associations).

[2] Dodd-Frank Act, section 312(b)(2)(B)(i).

[3] Dodd-Frank Act, section 316(b).

functions transferred to the OCC and FDIC, respectively.[4]

II. OCC Regulatory Actions To Integrate OTS Functions

As part of its preparation for integrating the functions of the OTS into the OCC, the OCC is reviewing its regulations, as well as those of the OTS, to determine what changes are needed to facilitate a smooth regulatory transition. We expect this review to be accomplished in several phases. First, the proposed rule that the OCC is issuing today includes provisions revising OCC rules that will be central to internal agency functions and operations immediately upon the transfer of supervisory jurisdiction for Federal saving associations. Such revisions include, for example, providing for the OCC's assessment of Federal savings associations and adapting the OCC's rules governing the availability and release of information to cover information pertaining to the supervision of those institutions. These changes are essential to facilitate a seamless transition when the OCC assumes responsibility for supervising Federal savings associations on the transfer date.

Also included in this proposal are changes to the OCC's regulations necessary to implement certain revisions to the banking laws that took effect on the enactment of the Dodd-Frank Act. These changes include revisions to the OCC's change in control rules to implement the moratorium on certain changes in control affected by section 603 of the Dodd-Frank Act and revisions to our Federal branch and agency rules to reflect the permanent increase in deposit insurance provided by section 335. We plan to publish a final rule resulting from this proposal that would be effective on or shortly after the transfer date.

As part of this first phase of its review of OTS and OCC regulations, the OCC also plans to issue an interim final rule with a request for comments, effective on the transfer date, that republishes those OTS regulations the OCC has the authority to promulgate and will enforce as of the transfer date.[5] These regulations will be moved into chapter I of title 12 of the Code of Federal Regulations and renumbered accordingly as OCC rules, with nomenclature and other technical amendments to reflect OCC supervision. OTS regulations that will be unnecessary following the transfer of OTS functions to the OCC, or that are superseded as of the transfer date by provisions of the Dodd-Frank Act, will be repealed at a later date.

In future phases of our regulatory review, which will occur subsequent to the transfer date, the OCC will consider more comprehensive substantive amendments, as necessary, to OTS regulations. For example, we may propose to repeal or combine provisions in cases where OCC and OTS rules are substantively identical or substantially overlap. In addition, we may propose to repeal or modify OCC or OTS rules where differences in regulatory approach are not required by statute or warranted by features unique to either charter. We expect to publish these amendments in one or more notices of proposed rulemaking, the first of which would be issued later in 2011.

III. Description of the Proposal

To incorporate the regulation and supervision of Federal savings associations, the OCC is proposing to amend the OCC's rules at 12 CFR part 4 pertaining to its organization and functions, the availability of information from the OCC under the Freedom of Information Act (FOIA), the release of non-public OCC information, and restrictions on the post-employment activities of senior examiners; and at 12 CFR part 8, pertaining to assessments. The OCC also is proposing in this rulemaking amendments to 12 CFR parts 5 and 28 to implement sections 603 and 335 of the Dodd-Frank Act, respectively; and 12 CFR parts 5, 7 and 34, pertaining to preemption and visitorial powers.

Set forth below, in numerical order of the parts of our regulations to be amended, is a detailed description of the proposed changes.

1. Part 4

a. Part 4, Subpart A—Organization and Functions

Subpart A of 12 CFR part 4 describes the organization and functions of the OCC and provides the OCC's principal addresses. In light of the transfer of the powers and duties of the OTS and the OTS Director to the OCC and the Comptroller on the transfer date, the OCC proposes to amend subpart A to reflect the organizational and functional changes resulting from this transfer. Other changes conform this subpart to additional provisions of the Dodd-Frank Act.

Office of the Comptroller of the Currency (§ 4.2). Section 4.2 states that the OCC supervises and regulates national banks and Federal branches and agencies of foreign banks. It lists ways in which this supervision and regulation is carried out, such as by examining these institutions, considering applications for changes in corporate or banking structure, and issuing rules pertaining to these institutions.

Section 312(b)(2)(B) of the Dodd-Frank Act transfers from the OTS to the OCC supervisory and regulatory authority over Federal savings associations, as well as rulemaking authority for all savings associations. Furthermore, section 314 of the Act updates the OCC's mission statement set forth at 12 U.S.C. 1 to reflect the OCC's current functions. It specifically provides that the OCC is charged with assuring the safety and soundness of, and compliance with laws and regulations, fair access to financial services, and fair treatment of customers by, the institutions and other persons subject to its jurisdiction.

We are proposing to amend § 4.2 to reflect these changes. Specifically, we have revised this section to incorporate this mission statement; to include Federal savings associations in the list of entities that the OCC examines, supervises, and regulates to carry out this mission; to provide that the OCC has rulemaking authority for state savings associations; and otherwise to streamline the section.

Comptroller of the Currency (§ 4.3). Section 4.3 states that the Comptroller of the Currency, as the head of the OCC, is responsible for all OCC programs and functions. It also lists certain interagency boards and organizations on which the Comptroller, pursuant to statute, serves as a member. Section 111(a) of the Dodd-Frank Act establishes the Financial Stability Oversight Council (FSOC), with the stated purposes of identifying risks to U.S.

[4] Dodd-Frank Act, section 322(a). Pursuant to section 322(a), the Director of the OTS, the Comptroller of the Currency, and the FDIC Chairman will jointly determine the number of OTS employees necessary to perform and support the functions transferred to each agency. Because most of the OTS's functions, *i.e.,* those relating to supervising Federal savings associations and all of the OTS's rulemaking authority for Federal and state savings associations, will transfer to the OCC on the transfer date, most of the OTS's approximately 1,000 employees will transfer to the OCC.

[5] Section 316(c)(2) of the Dodd-Frank Act requires the OCC (along with the FDIC and FRB) to identify those OTS regulations that are continued under the Act that each agency will enforce. The OCC and FDIC must consult with each other in identifying these regulations, and the OCC, FRB, and FDIC must publish a list of these identified regulations in the **Federal Register** not later than the transfer date. The OCC is in the process of identifying these OTS rules and will publish a notice in the **Federal Register** in the near future.

financial stability, promoting market discipline, and responding to emerging threats to the financial system's stability.[6] Section 111(b)(1)(C) of the Dodd-Frank Act makes the Comptroller of the Currency a voting member of the FSOC. The proposed rule amends § 4.3 by adding the FSOC to the list of organizations on which the Comptroller serves as a member.

Washington office and Web site (§ 4.4). Section 4.4 describes the role of the OCC's Washington, DC main office and headquarters. It states that the Washington office directs OCC policy and operations and is responsible for the direct supervision of certain national banks, including the largest national banks through its Large Bank Supervision Department, as well as other national banks requiring special supervision. Pursuant to the Dodd-Frank Act's integration of the OTS into the OCC, the proposal makes a conforming change to § 4.4 to state that the OCC's Washington headquarters also will have direct supervision over certain Federal savings associations, including the largest Federal savings associations and those that require special supervision, and that large Federal savings associations will be overseen by the OCC's Large Bank Supervision Department. In addition, we have updated this section to provide that the Washington office also is responsible for the supervision of Federal branches and agencies of foreign banks and have added a reference to the OCC's Web site.

District and field offices (§ 4.5). Section 4.5 explains the role of the OCC's district and field offices. Paragraph (a) states that each district office supervises the national banks and Federal branches and agencies of foreign banks in its district, except for those national banks supervised by the Washington, DC office, and includes a chart that provides each district office's address and its geographical composition. Paragraph (b) states that OCC's field offices and duty stations support the district offices' bank supervisory responsibilities.

Pursuant to the integration of the OTS into the OCC under the Dodd-Frank Act, the proposal amends § 4.5 to provide that each OCC district office also will have responsibility for certain Federal savings associations located in its district and that the OCC's field offices and duty stations also will support the district offices' savings association supervisory responsibilities. We also have updated this section to remove the reference to Federal branches and agencies of foreign banks, which now are supervised by Large Bank Supervision, instead of to the District Offices. Finally, we propose a technical amendment to § 4.5 to reflect that the OCC has four district offices.

These changes, along with those in § 4.4, will provide guidance on which OCC office will have primary responsibility for the supervision of each newly integrated Federal savings association. The OTS rule setting forth OTS organization and functions, 12 CFR part 500, will be repealed at a later date.

Frequency of examination of national banks (§ 4.6). Section 4.6 sets forth the statutory authority pursuant to which the OCC conducts examinations of national banks and the frequency of these examinations. The current, nearly identical OTS rule, 12 CFR 563.171, contains the same examination provisions with respect to savings associations.[7] Specifically, each of these rules provides that the OCC or OTS are required to conduct a full scope, on-site examination of every regulated entity (national bank or savings association, respectively) at least once during each 12-month period. Each rule also provides that the OCC or OTS may examine certain small national banks or savings associations every 18 months, rather than every 12 months, and sets forth the conditions that must be satisfied for this 18-month rule to apply. Finally, each rule provides that the OCC and OTS may examine a national bank or savings association more frequently, as each agency deems necessary.

Pursuant to the transfer of the OTS's supervisory authority over Federal savings associations to the OCC, we are proposing to integrate § 563.171 into § 4.6 so that the OCC rule applies to both national banks and Federal savings associations. We also propose to amend this section by updating the OCC's statutory authority to conduct examinations to include the relevant statutory cite for the OCC's new authority to examine savings associations, 12 U.S.C. 1463(a)(1), as amended by the Dodd-Frank Act. As a result of this amendment to § 4.6, Federal savings associations will be subject to the same frequency of examinations as prior to the transfer of authority from the OTS to the OCC. Section 563.171 will be repealed at a later date.

b. Part 4, Subpart B—Freedom of Information Act

Subpart B contains the OCC's rules for making requests for agency records and documents under the FOIA, 5 U.S.C. 552. The proposed rule applies these rules to FOIA requests relating to Federal savings associations received by the OCC as of the transfer date, ensures that records of the OTS are subject to the OCC's FOIA regulations, and makes various technical changes to part 4 to correct technical errors and to update appropriate references to OCC units charged with handling FOIA requests.

Purpose and scope (§ 4.11). This section provides the purpose and scope of the OCC's FOIA rule, which is used to facilitate the OCC's interaction with the banking industry and the public. The proposal amends this section to include the Federal savings association industry within this rule's scope. We also have amended this section to provide that this subpart does not apply to FOIA requests filed with the OTS before July 21, 2011. Instead, these requests are subject to the rules of the OTS in effect on July 20, 2011. This will ensure continuity of processing for pending requests at the OTS.

Information available under the FOIA (§ 4.12). This section provides that OCC records are available to the public except those listed as exempt. We have added a provision to the list of exempt records to account for OTS information in the possession of the OCC.

Public inspection and copying (§ 4.14). Section 4.14 lists the type of information the OCC makes readily available for public inspection and copying. The proposal amends this section by adding cross-references to the appropriate Federal savings association-related rules for public securities-related filings and the public file of pending applications. In addition, the proposal adds to this list any similar OTS information, to the extent this information is in the possession of the OCC. Finally, the proposal updates an obsolete reference in § 4.14(c) to the Multinational Banking Department to provide that the public files of pending applications of banks, as well as Federal savings associations, supervised by Large Bank Supervision are available from the Large Bank Licensing Expert.

How to request records (§ 4.15). Section 4.15 describes the process by which a person may request records from the OCC through the FOIA. Paragraph (c)(2) currently states that the OCC's Director of Communications or that person's delegate initially determines whether to grant a request for OCC records. The proposal amends this statement to indicate that the Comptroller or the Comptroller's designee makes this initial determination, which more accurately reflects the current process at the OCC. We have also proposed a change to paragraph (b), adding a reference to the

[6] Dodd-Frank Act, section 112(a)(1).

[7] *See* 12 U.S.C. 1820(d).

OCC's Web portal as a means to submit or appeal a FOIA request.

Predisclosure notice for confidential commercial information (§ 4.16). This section describes the circumstances under which the OCC provides a submitter of confidential commercial information with prompt written notice of the receipt of a request for this information or of an appeal of a denial of a request for such information. The proposal amends this section to cover information submitted to the OTS or to the Federal Home Loan Bank Board, its predecessor agency, now in the possession of the OCC.

How to track a FOIA request (§ 4.18). Section 4.18 provides that the OCC will issue a tracking number to all FOIA requesters within 5 days of the receipt of the request and describes how a FOIA requester may track the progress of their FOIA request at the OCC. The proposal amends this section to more accurately reflect the OCC's current process of automatically issuing tracking numbers to FOIA requesters who file via the OCC's Freedom of Information Request Portal, *https://appsec.occ.gov/publicaccesslink/palMain.aspx.*

c. Part 4, Subpart C—Non-Public Information

Subpart C contains OCC rules and procedures for requesting access to various types of non-public information and the OCC's process for reviewing and responding to such requests. It also clarifies the persons and entities with which the OCC can share non-public information. The OTS has similar rules at 12 CFR 510.5. This proposal amends subpart C to include information related to Federal savings associations and to ensure that such information remains accessible, subject to appropriate procedures and safeguards. The amendments to subpart C also ensure that non-public information in the possession of former employees or officials of the OTS will remain subject to confidentiality safeguards and procedures for requesting access to such information.

Purpose and scope (§ 4.31). This section outlines the purposes and scope of the OCC's rule for requesting access to various types of non-public information. The proposal amends this section to make reference to Federal savings associations and state savings association regulatory agencies, where appropriate. We also have amended this section to provide that this subpart does not apply to requests for non-public information filed with the OTS before July 21, 2011. Instead, these requests are subject to the rules of the OTS in effect on July 20, 2011. This will ensure continuity of processing for pending requests at the OTS.

Definitions (§ 4.32). Among other terms, this section defines "non-public OCC information" as information that the OCC is not required to release under the FOIA or that the OCC has not yet published or made available pursuant to 12 U.S.C. 1818(u). It further provides that such information includes records created or obtained by the OCC in connection with the OCC's performance of its responsibilities, and sets forth examples of these records. The proposal amends this section to include OTS non-public information in the definition of "non-public information." The proposal also amends the list of examples to include Federal savings association-related records. This would include OTS records in the possession of the OCC as of the transfer date as well as testimony from or an interview with, former OTS employees, officers, or agents concerning information acquired by that person in the course of his or her performance of official duties with the OTS or due to that person's official status with the OTS. Finally, the proposal makes technical amendments to this definition for clarification purposes and to remove duplicative information.

Section 4.32 also includes a definition of "supervised entity." The proposal amends this definition to include Federal savings association and Federal savings association subsidiaries.

Consideration of requests (§ 4.35). This section outlines the OCC's decision-making process for the release of non-public information, the standards for a denial of a request, and time periods for OCC consideration of the request. Paragraph (a)(5) of this section provides that the OCC generally notifies a national bank if it is the subject of a request for information, unless the OCC, in its discretion, determines that to do so would advantage or prejudice any of the parties in the matter at issue. The proposal amends this paragraph to include Federal savings associations.

Persons and entities with access to OCC information; prohibition on dissemination (§ 4.37). Paragraph (a) of § 4.37 prohibits, except as authorized by this subpart or otherwise by the OCC, a current or former OCC employee or agent from disclosing or permitting the disclosure of any non-public OCC information to anyone other than an employee or agent of the Comptroller for use in the performance of OCC duties. This section also requires any current or former OCC employee or agent subpoenaed or otherwise requested to provide non-public information to immediately notify the OCC of such request, and outlines the duties of such employee or agent when subject to such a request. The proposal amends this section to cover former OTS employees. As a result, former OTS employees must comply with this section with respect to OTS information that is in the possession of the OCC and covered by this section after the transfer date.

Subsection (b) of this section prohibits any person, national bank, or other entity, including one in lawful possession of non-public OCC information, from disclosing such information except when the requester has sought the information from the OCC pursuant to this section and as ordered by a Federal court in a judicial proceeding in which the OCC has had the opportunity to appear and oppose discovery. This subsection also provides that a person, bank or other entity may disclose non-public OCC information to a person or organization officially connected with the bank as officer, director, employee, attorney, auditor, or independent auditor, or to a consultant with a specified agreement with the person, bank, or entity. Finally, this subsection outlines the duties of such person, bank or entity when subject to a request for non-public OCC information. The proposal amends paragraph (b) to include Federal savings associations.

Paragraph (c) provides that, when not prohibited by law, the Comptroller may make non-public information available to the Federal Reserve Board and FDIC, and in the Comptroller's sole discretion, to certain other government agencies of the United States and foreign governments, state agencies with authority to investigate violations of criminal law, and state bank regulatory agencies. The proposal amends this section to permit the Comptroller to also disclose this information to state savings association regulatory agencies.

Notification of parties and procedures for sharing and using OCC records in litigation (§ 4.39). This section requires persons requesting that the OCC permit the testimony of an OCC employee or former OCC employee to notify all other parties to the case that a request has been submitted. The proposal applies this section to requests for the testimony of former OTS employees.

Appendix A to Subpart C of Part 4—Model Stipulation for Protective Order and Model Protective Order. Appendix A to subpart C sets forth a model stipulation for protective order and a model protective order for the release of non-public OCC information. The proposal amends these models to include statutory citations relating to the Comptroller's authority to deem

Federal savings association-related information confidential. Specifically, the proposal adds citations to 12 U.S.C. 1463(a)(1), 1464(a)(1) and 1464(d)(1)(B)(i), and 5 U.S.C. 301.

d. Part 4, Subpart E—One-Year Restrictions on Post-Employment Activities of Senior Examiners

Twelve CFR part 4, subpart E sets forth the statutorily required post-employment restrictions placed on senior examiners after these individuals leave the employment of the OCC. Specifically, subpart E prohibits a senior examiner of a national bank from knowingly accepting compensation from that bank or a company that controls that bank for one year after leaving the employment of the OCC, if such individual was the bank's senior examiner for two or more months during the last 12 months of OCC employment. The OTS applied substantively identical restrictions derived from the same statutory authority as the OCC rules on its senior examiners of savings associations at 12 CFR part 507.[8]

The OCC is proposing amendments to subpart E as part of its integration of the functions and former employees of the OTS. The resulting OCC regulation would include the same one-year post-employment restrictions that were imposed on senior examiners of national banks and savings associations when the OCC and OTS operated under separate regulations. Section 507 will be repealed at a later date, as it no longer will be necessary.

Definitions (§ 4.73). Section 4.73 defines certain terms used in subpart E. Specifically, § 4.73 defines a "consultant" of a national bank, bank holding company, or other company as one who works directly on matters for, or on behalf of, the bank, bank holding company, or other company. It defines "control" as having the meaning given in section 2 of the Bank Holding Company Act (12 U.S.C. 1841(a)). In the proposal, the OCC amends these definitions to encompass its oversight of Federal savings associations. Specifically, we propose to amend the definition of "consultant" to include also a consultant of a savings association or savings and loan holding company. We also propose to amend the definition of "control" to include reference to section 10 of the Home Owners' Loan Act (12 U.S.C. 1467a) when referring to a savings association or a savings and loan holding company.

The proposal further adds the definitions of "savings association" and "savings and loan holding company." Specifically, "savings association" would have the meaning given in section 3 of the FDI Act (12 U.S.C. 1813(b)(1)). "Savings and loan holding company" would mean any company that controls a savings association or any other company that is a savings and loan holding company (as provided in section 10 of the Home Owners' Loan Act (12 U.S.C. 1467a)).

In addition, the proposal amends the definition of "senior examiner." Currently, § 4.73 defines "senior examiner" as an OCC officer or employee who has been authorized by the OCC to examine national banks and who meets certain other criteria. The OCC proposes to apply this same definition to officers and employees who examine Federal savings associations.

The OCC is aware that for one year following the transfer date, a senior examiner subject to the one-year post employment restriction may have worked for both the OTS and OCC during the one-year look-back period. We have drafted the proposed rule to address this situation by referring to either the OCC or the OTS as having had the authority to authorize the senior examiner's activities during this one-year look back period. One year after the transfer date, references to former OTS employment will not be needed, and the provision that references the OTS will sunset. It will be replaced by a provision that only addresses prior OCC employment.

One-year post-employment restrictions (§ 4.74). Section 4.74 contains the post-employment prohibition for senior examiners. As noted above, as of the transfer date, the OCC will assume responsibility for examining Federal savings associations and will employ former OTS employees, including the senior examiners, authorized to examine these institutions. Accordingly, the OCC proposes to amend § 4.74 to extend its post-employment restrictions to senior examiners of Federal savings associations and to their employment with such savings associations and controlling savings and loan holding companies.

As also noted above, however, for one year following the transfer date, the 12-month look-back window will include a period during which a savings association senior examiner may have been authorized by the OTS to conduct thrift examinations. The proposed language of § 4.74 addresses this period of time by referencing employment with the OCC and the OTS. One year post-transfer, the obsolete references to the OTS will sunset.

Effective Date; Waivers (§ 4.75). Section 4.75 states that the post-employment restrictions set forth in § 4.74 do not apply to any current or former OCC officer or employee if the Comptroller finds that granting the individual a waiver would not affect the integrity of the OCC's supervisory program. The OCC proposes to amend § 4.75 to recognize the Comptroller's authority to issue similar waivers for former OTS employees during the first year after the transfer date. After this time period, there will no longer be former OTS senior examiners who are subject to the post-employment restrictions. Therefore, one year after the transfer date, references in § 4.75 to former OTS employees will sunset.

The proposal also makes a technical amendment to this section by deleting § 4.75(a), which contains an obsolete reference to those who worked for the OCC prior to 2005. Conforming structural changes are made to the section in light of the deletion of this subsection.

Penalties (§ 4.76). This section sets forth the penalties that apply to a senior examiner who violates the one-year post-employment restrictions set forth in § 4.74. Section 4.76(a) states that this individual may be subject to an order (a) removing him from office or prohibiting him from participating in the affairs of the relevant bank, bank holding company, or other company that controls such institution for up to five years; and (b) prohibiting him from participating in the affairs of any insured depository institution for up to five years. Alternatively, he may be subject to a civil money penalty of not more than $250,000. Paragraphs (b) through (e) set forth the mechanics by which the penalties listed in subsection (a) are administered.

The proposal amends this section to include Federal savings associations, Federal savings association senior examiners, and former OTS employees within the scope of the § 4.76 penalty provisions. As noted above, language referencing former OTS employees will sunset one year after the transfer date, at which time the post-employment provisions no longer apply to former OTS employees.

Finally, the proposal makes a technical correction to this provision. The current provision incorrectly provides that penalties will be applied when the senior examiner of a bank accepts compensation from that bank at any time after leaving the employment of the OCC. This amendment limits the penalties to violations that occur during

[8] *See* 12 U.S.C. 1820(k).

the one-year look-back period, the time period during which such employment is prohibited by the rule.

2. Dodd-Frank Act Amendments Affecting Approval of Change in Control Notices and Acceptance of Deposits by Federal Branches (Parts 5 and 28)

This proposal contains amendments to 12 CFR part 5 to implement section 603 of the Dodd-Frank Act. Section 603 provides for a three-year moratorium (with certain exceptions) on the approval of a change in control of credit card banks, industrial banks and trust banks, if the change in control would result in a commercial firm controlling (directly or indirectly) such a bank. The moratorium took effect on the date of enactment of the Act, *i.e.,* July 21, 2010. The proposal amends 12 CFR 5.50(f) to implement this section of the Act.

Section 6 of the International Banking Act, 12 U.S.C. 3104(b), provides that uninsured Federal branches of foreign banks may not accept deposits in an amount of less than the standard maximum deposit insurance amount (SMDIA). The SMDIA is defined in 12 U.S.C. 1821(a)(1)(E) to mean $100,000, subject to certain adjustments provided for in the statute. Section 335 of the Dodd-Frank Act, which takes effect on the transfer date, amends 12 U.S.C. 1821(a)(1)(E) to change the amount from $100,000 to $250,000. Section 28.16(b) of the OCC's regulations states that an uninsured Federal branch may accept initial deposits of less than $100,000 only from certain persons. In order to conform this section of the OCC's regulations to the statutory changes and to prevent the need to continually amend this section for changes in the SMDIA, the proposal amends 12 CFR 28.16(b) to refer to 12 U.S.C. 1821(a)(1)(E), rather than the obsolete reference to $100,000.

3. Dodd-Frank Act Provisions Affecting Preemption and Visitorial Powers (Parts 5, 7, and 34)

a. Preemption

The Dodd-Frank Act contains provisions that affect the scope of national bank preemption, effective as of the transfer date.[9] The Act eliminates preemption of state law for national bank subsidiaries, agents and affiliates.[10] We therefore propose to rescind 12 CFR 7.4006, which is the OCC's regulation concerning the application of state laws to national bank operating subsidiaries.

The Act also changes the preemption standards applicable to Federal savings associations to conform to those applicable to national banks.[11] The Act specifically provides that, as of the transfer date, determinations by a court or by the OCC under the Home Owners' Loan Act (HOLA) with respect to Federal savings associations must be made in accordance with the laws and legal standards applicable to national banks regarding the application of state law.[12]

In order to implement this standard for Federal savings associations, the OCC is proposing amendments to its regulations to apply national bank standards on preemption and visitorial powers to Federal savings associations and their subsidiaries to the same extent and in the same manner as these standards apply to national banks and their subsidiaries.[13]

In addition, section 1044 of the Dodd-Frank Act contains several provisions addressing preemption of "state consumer financial laws."[14] The Act provides that "state consumer financial laws" may be preempted only if: (1) Application of such a law would have a "discriminatory effect" on national banks compared with state-chartered banks in that state; (2) "in accordance with the legal standard for preemption" in the Supreme Court's decision in *Barnett Bank of Marion County, N.A.* v. *Nelson,*[15] the state consumer financial law "prevents or significantly interferes with the exercise by the national bank of its powers" ("*Barnett* standard" preemption); or (3) the state consumer financial law is preempted by a provision of Federal law other than Title LXII of the Revised Statutes.[16]

Because these provisions only apply to preemption of "state consumer financial laws," they do not affect the application of OCC regulations to state laws that do not come within that definition. We have therefore examined whether these Dodd-Frank provisions, and particularly the *Barnett* standard preemption provision, require changes to our rules with respect to that category of state law.

The language of the *Barnett* standard preemption provision in the final legislation differs substantially from earlier versions of the legislation. The version of the legislation passed by the House of Representatives made no reference to the *Barnett* decision.[17] Important changes were made in the Senate as the legislation progressed and sponsors of key language that was ultimately adopted have explained that the changes were intended to provide consistency and legal certainty by preserving the preemption standard of the Supreme Court's *Barnett* decision.[18]

This is consistent with both the language of the statute and the substance of the *Barnett* decision. The *Barnett* standard preemption provision instructs that preemption will occur, if, "in accordance with the legal standard for preemption in the decision of the Supreme Court" in *Barnett,* a state consumer financial law "prevents or significantly interferes with the exercise by a national bank of its powers."[19] The legal standard for preemption in *Barnett* is conflict preemption and the decision references different formulations of conflict to illustrate and explain the nature and level of interference with national bank powers that triggers preemption. The phrase "prevent or significantly interfere" is one exemplary formulation of conflict preemption used in the decision. It is not the only formulation; it is not set apart from the others; and it is not presented as a test different from the others; rather, it is part of the whole of the Court's reasoning in its decision. Thus, in the *Barnett* preemption provision, the phrase may serve as a touchstone or starting point in the analysis, but it takes meaning from the whole of the Supreme Court's decision. Since the phrase must be "in accordance with the legal standard for preemption" in the *decision* of the Court, the analysis may

[9] Section 1044, which amends chapter one of title LXII of the Revised Statutes by inserting a new section 5136C, contains the principal national bank preemption provisions.

[10] Dodd-Frank Act sections 1044(a), 1045, 124 Stat. 1376, 2016, 2017 (July 21, 2010).

[11] Dodd-Frank Act section 1046, 124 Stat. 2017 (*to be codified* at 12 U.S.C. 1465). In addition, the Act states that the provisions in section 1044 regarding visitorial powers shall apply to Federal savings associations and their subsidiaries to the same extent and in the same manner as if they were national banks or national bank subsidiaries. Dodd-Frank Act section 1047(b), 124 Stat. 2018 (*to be codified* at 12 U.S.C. 1465).

[12] *Id.*

[13] To fulfill this statutory mandate, the affected OTS preemption regulations will be repealed.

[14] The Dodd-Frank Act defines the term "state consumer financial law" to mean a state law that (1) does not directly or indirectly discriminate against national banks and that (2) directly and specifically (3) regulates the manner, content, or terms and conditions of (4) any financial transaction or related account (5) with respect to a consumer. Dodd-Frank Act section 1044(a), 124 Stat. at 2014–2015.

[15] 517 U.S. 25 (1996).

[16] Dodd-Frank Act section 1044(a), 124 Stat. at 2015.

[17] *See* H.R. 4103, 111th Cong. section 4404 (as passed by the House of Representatives Dec. 11, 2009).

[18] *See* 156 Cong. Rec. S5870–02, 2010 WL 2788025 (July 15, 2010) (colloquy between Senator Carper, the sponsor of the key language in the *Barnett* standard preemption provision, and Chairman Dodd). The same understanding was stated by Senator Johnson. *See* 156 Cong. Rec. S5889 (July 15, 2010).

[19] Dodd-Frank Act section 1044(a), 124 Stat. at 2015.

not simply stop and isolate those terms from the rest of the decision; it is necessary to take into account the whole of the conflict preemption analysis in the Supreme Court's decision.[20] Notably, a recent decision handed down by the 11th Circuit Court of Appeals cited other formulations of conflict preemption used in the *Barnett* decision for the conclusion that under the Dodd-Frank Act, the proper preemption test is conflict preemption.[21]

This result is supported by other precedent and portions of section 1044 of the Dodd-Frank Act. The *Barnett* standard preemption provision uses language virtually identical to that used in section 104(d)(2)(A) of the Gramm-Leach-Bliley Act of 1999 (GLBA).[22] The leading case applying that standard similarly treated the phrase "prevents or significantly interferes" as a reference to the whole of the Court's *Barnett* preemption analysis and referred to the GLBA statutory language as "the traditional *Barnett Bank* standards."[23] Other portions of section 1044 similarly convey that the *Barnett* standard preemption provision refers to the legal standard for conflict preemption contained in the whole of the Court's decision.[24]

The OCC recognizes that the manner in which preemption under the *Barnett* case is stated in Dodd-Frank also could have been intended to clarify that standard relative to how current OCC regulations have distilled principles from the *Barnett* case. Portions of our current regulations provide that state laws that "obstruct, impair, or condition" a national bank's powers are not applicable to national banks. This formulation has created ambiguities and misunderstandings regarding the preemption standard that it was intended to convey. We are therefore proposing to remove this language where it appears in our regulations and to remove 12 CFR 7.4009 in its entirety. This language was drawn from an amalgam of prior precedents relied upon in the Supreme Court's decision in *Barnett,* and its elimination will remove any ambiguity that the conflict preemption principles of the Supreme Court's *Barnett* decision are the governing standard for national bank preemption. To the extent any existing precedent cited those terms in our regulations, that precedent remains valid, since the regulations were premised on principles drawn from the *Barnett* case. Going forward, however, that formulation would be removed as a regulatory preemption standard.

Accordingly, because the Dodd-Frank Act preserves the *Barnett* conflict preemption standard, OCC's rules[25] and existing precedents (including judicial decisions and interpretations) consistent with that analysis are also preserved.[26] We have reviewed those rules, taking into account the definition of a state consumer financial law, to confirm that the specific types of laws cited in the rules are consistent with the standard for conflict preemption in the Supreme Court's *Barnett* decision.

We are also proposing clarifications to the OCC's preemption regulations regarding the types of laws that would *not* be preempted under the Dodd-Frank Act provisions. Specifically, the proposal amends provisions of the regulations describing the types of state laws that are *not* preempted, to make specific reference to the *Barnett* decision.

The OCC recognizes that going forward, after the transfer date, the Dodd-Frank Act imposes new procedures and consultation requirements with respect to how we may reach certain future preemption determinations and clarifies the criteria for judicial review of these determinations. Specifically, the Act requires that the OCC make preemption determinations with regard to state consumer financial laws under the *Barnett* standard by regulation or order on a "case-by-case basis" in accordance with applicable law.[27] The Act defines "case-by-case basis" as a determination by the Comptroller as to the impact of a "particular" state consumer financial law on "any national bank that is subject to that law" or the law of any other state with substantively equivalent terms.[28]

When making a determination under this provision that a state consumer financial law has substantively equivalent terms as the law the OCC is preempting, the OCC must first consult with and take into account the views of the Consumer Financial Protection Bureau (CFPB) in making that determination. We note that this consultation process synchronizes with the role and authorities granted to the CFPB under the Dodd-Frank Act. It can inform the CFPB's exercise of its authority to enhance Federal consumer protection rules, and that rulemaking process, in turn, includes consultation with appropriate prudential regulators.[29]

The Dodd-Frank Act also requires there to be substantial evidence, made on the record of the proceeding, to support an OCC order or regulation that declares inapplicable a state consumer financial law under the *Barnett* standard. Finally, the Act requires the OCC to conduct a periodic review, subject to notice and comment, every 5 years after issuing a preemption determination relating to a state consumer financial law and to publish a list of such preemption determinations every quarter.[30]

b. Visitorial Powers

The National Bank Act, at 12 U.S.C. 484, vests in the OCC exclusive visitorial powers with respect to national banks, subject to certain

[20] The *Barnett* decision describes in detail the analysis under the *Barnett* conflict preemption standard. 517 U.S. at 33–34.

[21] *Baptista* v. *JPMorgan Chase, N.A.,* __ F. 3d ___, (11th Cir. May 11, 2011) ("Thus it is clear that under the Dodd-Frank Act, the proper preemption test asks whether there is a significant conflict between the state and Federal statutes—that is, the test for conflict preemption.").

[22] *See* 15 U.S.C. 6701(d)(2)(A).

[23] *Association of Banks in Insurance Inc.* v. *Duryee,* 270 F.3d 397, at 405, 408 (6th Cir. 2001).

[24] The related requirement that the OCC must have "substantial evidence" on the record to support adoption of preemption rules or orders under this standard refers to the legal standard of the *Barnett* decision, not to a different standard based on a single phrase used in that decision, and thus incorporates the entirety of *Barnett's* conflict preemption analysis upon which the decision was founded. *See* Dodd-Frank Act section 1044(a), 124 Stat. at 2016 (providing that regulations and orders promulgated under *Barnett* standard preemption do not affect the application of a state consumer financial law to a national bank unless substantial evidence made on the record of the proceeding supports the specific finding of preemption "in accordance with the legal standard of the decision of the Supreme Court of the United States in *Barnett Bank of Marion County, N.A.* v. *Nelson, Florida Insurance Commissioner, et al.,* 517 U.S. 25 (1996).")

[25] *See, e.g.,* 69 FR 1904 (Jan. 13, 2004).

[26] *See* Letters from Acting Comptroller John Walsh to Senator Thomas R. Carper and Senator Mark Warner, May 12, 2011. Earlier versions of the legislation would have had a retroactive impact by creating various new standards for preemption under the National Bank Act, invalidating an extensive body of national bank judicial, interpretive and regulatory preemption precedent. *See* H.R. 4103, *supra* note 17. The final version of the Dodd-Frank Act legislation did not adopt this approach. Section 1043 of the Act, which dated from those early versions of the legislation, was not changed to reflect the final version of the legislation, but remains relevant in connection with changes in the treatment of preemption for national bank subsidiaries, and Federal savings associations and their subsidiaries and agents.

[27] Dodd-Frank Act section 1044(a), 124 Stat. at 2015.

[28] *Id.* This language was designed "to permit the OCC to make a single determination concerning multiple states' consumer financial laws, so long as the law contains substantively equivalent terms." *See* S. Rep. 11–176, at 176 (April 30, 2010). The Act contains no statement that Congress intended to retroactively apply these procedural requirements to overturn existing precedent and regulations, and that interpretation would be contrary to the presumption against retroactive legislation. *See e.g., Landgraf* v. *USI Film Products,* 511 U.S., 272–73 (1994).

[29] Dodd-Frank Act section 1022(b), 124 Stat. at 1981.

[30] Dodd-Frank Act section 1044(a), 124 Stat. at 2016.

express exceptions.[31] On June 29, 2009, the Supreme Court issued its opinion in *Cuomo* v. *Clearing House Association, L.L.C.*[32] The Court held that when a state attorney general files a lawsuit to enforce a state law against a national bank, "[s]uch a lawsuit is not an exercise of 'visitorial powers' and thus the Comptroller erred by extending the definition of 'visitorial powers' to include 'prosecuting enforcement actions' in state courts."[33] At the same time, the decision recognized the "regime of exclusive administrative oversight by the Comptroller"[34] applicable to national banks. Accordingly, under *Cuomo,* a state attorney general may bring an action against a national bank in a court of appropriate jurisdiction to enforce non-preempted state laws, but is restricted in conducting non-judicial investigations or oversight of a national bank.

The Dodd-Frank Act expressly codifies the Supreme Court's decision in *Cuomo* regarding enforcement of state law against national banks by providing that no provision or other limits restricting the visitorial powers to which a national bank is subject shall be construed to limit or restrict the authority of any state attorney general to "bring an action against a national bank in a court of appropriate jurisdiction to enforce an applicable law and to seek relief as authorized by such law."[35] Accordingly, the OCC is revising § 7.4000 to provide that an action by a state attorney general (or other chief law enforcement officer) in a court of appropriate jurisdiction to enforce a non-preempted state law against a national bank and seek relief as authorized thereunder is not an exercise of visitorial powers under 12 U.S.C. 484.

c. Description of the Proposed Rule

The proposal accordingly amends provisions of the OCC's regulations relating to preemption (12 CFR 7.4007, 7.4008, 7.4009, and 34.4), operating subsidiaries (12 CFR 5.34 and 7.4006), and visitorial powers (12 CFR 7.4000).

- The proposal adds §§ 7.4010(a) and 34.6 to provide that state laws apply to Federal savings associations and their subsidiaries to the same extent and in the same manner that those laws apply to national banks and their subsidiaries. The proposal also adds § 7.4010(b) to subject Federal savings associations and their subsidiaries to the same visitorial powers provisions that apply to national banks and their subsidiaries.
- The proposal makes conforming changes to §§ 7.4007, 7.4008, and 34.4. It revises paragraphs (b) in §§ 7.4007, (d) in § 7.4008, and (a) in § 34.4 by removing the phrase "state laws that obstruct, impair, or condition a national bank's ability to fully exercise its Federally authorized * * * powers are not applicable to national banks." The proposal further clarifies that a state law is *not* preempted to the extent consistent with the *Barnett* decision.
- The proposal deletes § 7.4009.
- The proposal deletes § 7.4006, which governs applicability of state laws to national bank operating subsidiaries. The proposal also makes conforming revisions to 12 CFR 5.34(a) and subsection (e)(3) by expressly referencing the new section 12 U.S.C. 25b adopted by the Dodd-Frank Act, which provides that Title LXII of the Revised Statutes and section 24 of the Federal Reserve Act (12 U.S.C. 371) do not preempt, annul, or affect the applicability of any state law to any subsidiary, affiliate, or agent of a national bank (other than a subsidiary, affiliate, or agent that is chartered as a national bank).
- The proposal makes a number of changes to § 7.4000 to conform the regulations to the Supreme Court's decision in the *Cuomo* case as adopted by the Dodd-Frank Act. First, it adds a reference to 12 U.S.C. 484 in § 7.4000(a)(1). Second, it revises paragraph (a)(2)(iv) by adding "investigating or" before "enforcing compliance with any applicable Federal or State laws concerning those activities." This incorporates the *Cuomo* Court's recognition that nonjudicial investigations generally constitute an exercise of visitorial powers.[36] Third, it adds a new paragraph (b), which specifically provides that "[i]n accordance with the decision of the Supreme Court in *Cuomo* v. *Clearing House Assn., L.L.C.,* 129 S. Ct. 2710 (2009), an action against a national bank in a court of appropriate jurisdiction brought by a state attorney general (or other chief law enforcement officer) to enforce a non-preempted state law against a national bank and to seek relief as authorized thereunder is not an exercise of visitorial powers under 12 U.S.C. 484." Fourth, it redesignates paragraphs (b) and (c) as new paragraphs (c) and (d) and makes conforming revisions to § 7.4000(c)(2), which provides an exception from the general rule in § 7.4000(a)(1) for such visitorial powers as are vested in the courts of justice.

4. Assessments (Part 8)

a. Background

The Dodd-Frank Act transfers authority to collect assessments for Federal savings associations from the OTS to the OCC.[37] This authority is effective as of the transfer date, July 21, 2011.[38] The Dodd-Frank Act also provides that, in establishing the amount of an assessment, the Comptroller may consider the nature and scope of the activities of the entity, the amount and type of assets it holds, the financial and managerial condition of the entity, and any other factor that is appropriate.[39]

The OCC and the OTS currently assess banks and savings associations respectively using different methodologies, although the agencies' methodologies generally result in

[31] The statute provides that "[n]o national bank shall be subject to any visitorial powers except as authorized by Federal law, vested in the courts of justice or such as shall be, or have been exercised or directed by Congress or by either House thereof or by any committee of Congress or of either House duly authorized."

[32] 129 S. Ct. 2710 (2009).

[33] *Id.* at 2721.

[34] *Id.* at 2718.

[35] Dodd-Frank Act section 1047(a), 124 Stat. 2018 (*to be codified* at 12 U.S.C. 25b). The Act also amends HOLA to apply the same visitorial standard that applies to national banks to Federal savings associations and their subsidiaries. Dodd-Frank Act section 1047(b), 124 Stat. 2018 (*to be codified* at 12 U.S.C. 1465).

[36] The Court stated that:

The request for information [by the Attorney General] in the present case was stated to be "in lieu of" other action; implicit was the threat that if the request was not voluntarily honored, that other action would be taken. All parties have assumed, and we agree, that if the threatened action would have been unlawful the request-cum-threat could be enjoined. Here the threatened action was not the bringing of a civil suit, or the obtaining of a judicial search warrant based on probable cause, but rather the Attorney General's issuance of subpoena on his own authority under New York Executive Law, which permits such subpoenas in connection with his investigation of "repeated fraudulent or illegal acts * * * in the carrying on, conducting or transaction of business." *See* N.Y. Exec. Law Ann. § 63(12) (West 2002). That is not the exercise of the power of law enforcement "vested in the courts of justice" which 12 U.S.C. 484(a) exempts from the ban on exercise of supervisory power.

Accordingly, the injunction below is affirmed as applied to the threatened issuance of executive subpoenas by the Attorney General for the State of New York, but vacated insofar as it prohibits the Attorney General from bringing *judicial enforcement actions.*

Cuomo, 129 S. Ct. at 2721–2722 (emphasis added).

[37] *See* Dodd-Frank Act section 318(b) (authorizing the Comptroller to collect assessments, fees, or other charges from entities for which it is the appropriate Federal banking agency). *See also id.* section 312(c) (amending the Federal Deposit Insurance Act to designate the OCC as the appropriate Federal banking agency for Federal savings associations); *id.* section 369 (amending the HOLA to authorize the Comptroller to assess savings associations and affiliates of savings associations for the cost of examinations as the Comptroller "deems necessary or appropriate").

[38] Dodd-Frank Act section 312.

[39] Dodd-Frank Act section 318(b).

similar levels of assessments. Under the OTS assessment system, assessments are due each year on January 31 and July 31, and are calculated based on an institution's asset size, condition, and complexity.[40] The asset size component of the assessment is calculated using a table and formula contained in the OTS's regulation.[41] The OTS sets specific rates that apply to the table through a Thrift Bulletin on assessments and fees.[42]

The condition component in the OTS's regulation applies to savings associations with Uniform Financial Institutions Rating System (UFIRS) ratings of 3, 4, or 5. The condition surcharge is determined by multiplying a savings association's size component by 50%, in the case of any association that receives a composite UFIRS rating of 3, and 100% in the case of any association that receives a composite UFIRS rating of 4 or 5. Under the OTS regulation, there is no cap on the condition surcharge.

The assessment for complexity is based on a savings association's trust assets under management and on its non-trust assets. The OTS charges a complexity component for trust assets if a savings association has more than $1 billion in one of three components: Trust assets, the outstanding principal balance of assets that are covered by recourse obligations or direct credit substitutes, and the principal amount of loans that the institution services for others. The OTS charges a complexity component for non-trust assets above $1 billion under tiers and rates set out in a Thrift Bulletin.

If a savings association administers trust assets of $1 billion or less, the OTS may assess fees for its examinations and investigations of those institutions. The OTS also may assess a savings association for examination or investigation of its affiliates. Again, these fees are set in a Thrift Bulletin.

Under the OCC's assessment regulation, assessments for each national bank are due on March 31 and September 30 of each year.[43] The semiannual assessment for each national bank is based on an institution's asset size and is calculated using a table and formula in the OCC's regulation.[44] The OCC sets the specific rates for the table each year in the Notice of Comptroller of the Currency Fees (Notice of Fees).[45] The OCC may provide a reduced semiannual assessment for each non-lead bank within a bank holding company.[46]

In addition to the semiannual assessment, the OCC applies a separate assessment for its examination of "independent credit card banks" and "independent trust banks."[47] A bank is an independent credit card bank if it engages primarily in credit card operations and is not affiliated with a full-service national bank.[48] The assessment is based on "receivables attributable," defined as the total amount of outstanding balances due on credit card accounts owned by the bank (the receivables attributable to those accounts), minus receivables retained on the bank's balance sheet.

An "independent trust bank" is a national bank with trust powers that has fiduciary and related assets, does not primarily offer full-service banking, and is not affiliated with a full-service national bank.[49] The independent trust assessment is made up of a minimum amount, set in the Notice of Fees, and an additional amount for banks with over $1 billion in fiduciary and related assets. The specific rate applicable to fiduciary and related assets above $1 billion is also set in the annual Notice of Fees.

The OCC applies a condition-based surcharge to the semiannual assessment of national banks.[50] The condition surcharge applies to national banks with UFIRS ratings of 3, 4, or 5. The condition surcharge is determined by multiplying the general semiannual assessment by 1.5, in the case of any national bank that receives a composite UFIRS rating of 3, and 2.0 in the case of any national bank that receives a composite UFIRS rating of 4 or 5. The condition surcharge is assessed against, and limited to, the first $20 billion of a national bank's book assets.

b. Description of the Proposed Rule

The proposed rule would amend part 8 to incorporate Federal savings associations into the OCC's assessment structure. Under the proposed rules, these savings associations would be assessed using the same methodologies, rates, fees, and payment due dates that apply currently to national banks. The OTS's existing assessment regulation would no longer be in effect and will be repealed at a later date.

Under the OCC's assessment system, some savings associations will pay marginally more assessments than in the past, while others will pay lower assessments. However, during the first two assessment cycles after the transfer date, the OCC will base savings association assessments on either the OCC's assessment regulation (as amended to include Federal savings associations) or the former OTS assessment structure, whichever yields the lower assessment for that savings association. After the March 2012 assessment, all national banks and Federal savings associations would be assessed using the OCC's assessment structure.[51] The OCC believes that this phase-in will allow savings associations sufficient time to adjust to the OCC's assessment program.

The proposed rule also implements section 605(a) of the Dodd-Frank Act, which provides the OCC (and other appropriate Federal banking agencies) with authority to conduct examinations of depository-institution permissible activities of nondepository institution subsidiaries of depository institution holding companies. Section 605 provides specific authority for the OCC and other regulators to assess such nondepository institution subsidiaries for the costs of examination. The proposed rule would implement this new statutory assessment authority.

IV. Request for Comments

The OCC encourages comment on any aspect of this proposal and especially on those issues specifically noted in this preamble.

V. Regulatory Analysis

Regulatory Flexibility Act

Pursuant to Section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b) (RFA), the regulatory flexibility analysis otherwise required under

[40] 12 CFR part 502.

[41] 12 CFR 502.20.

[42] Thrift Bulletin 48–29.

[43] *See* 12 CFR part 8. Part 8 contains parallel assessment rules for Federal branches and agencies.

[44] 12 CFR 8.2.

[45] *See http://www.occ.gov/news-issuances/bulletins/2010/bulletin-2010-41.html* (Notice of Comptroller of the Currency Fees for Year 2011).

[46] A "lead bank" is defined in the OCC's regulation as the largest national bank controlled by a company based on the total assets held by each national bank controlled by that company. 12 CFR 8.2(a)(6)(ii)(A). A "non-lead" bank means a national bank that is not the lead bank controlled by a company that controls two or more national banks. *Id.* § 8.2(a)(6)(ii)(B). The percentage of the discount for non-lead banks is set in the annual Notice of Comptroller of the Currency Fees.

[47] 12 CFR 8.2(c), 8.6(c). The OCC also assesses a fee for special examinations and investigations, such as special examinations and investigations of affiliates of national banks. 12 CFR 8.6.

[48] A "full service national bank" is defined as a bank that generates more than 50% of its interest and non-interest income from activities other than credit card operations or trust activities and is authorized according to its charter to engage in all types of permissible banking activities. 12 CFR 8.2(c)(3)(iii), 8.6(c)(3)(ii).

[49] 12 CFR 8.6(c)(3)(iii).

[50] 12 CFR 8.2(d).

[51] The OCC intends to implement this phase-in through an amended Notice of Comptroller of the Currency Fees.

section 604 of the RFA is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities and publishes its certification and a short, explanatory statement in the **Federal Register** along with its rule. We have concluded that the proposed rule does not have an significant economic impact on a substantial number of small entities currently supervised by the OCC (*i.e.,* national banks and Federal branches and agencies of foreign banks). In addition, although the proposed rule will directly affect all Federal savings associations, we have concluded that it does not have a significant economic impact on a substantial number of small Federal savings associations. Specifically, the amendments to part 4 do not contain new compliance requirements. Any costs that may be associated with integrating the functions of the two agencies, and other proposed changes to part 4, will be borne by the OCC. In addition, there are no costs directly associated with the proposed amendments to 12 CFR 5.50(f)(5) and Part 28, implementing sections 603 and 335 of the Dodd-Frank Act, respectively, or with the amendments necessary to apply national bank preemption standards to Federal savings associations. Furthermore, we have determined that the amendments to the preemption and visitorial powers provisions affecting national banks will not have a significant economic impact on a substantial number of small entities. Lastly, although the amendments to part 8, assessments, will economically impact a substantial number of small savings associations, this impact will not be significant. Therefore, pursuant to Section 605(b) of the RFA, the OCC hereby certifies that this proposal will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not needed.

Paperwork Reduction Act

The rule contains several currently approved collections of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520).[52] The amendments adopted today do not introduce any new collections of information into the rules, nor do they amend the rules in a way that substantively modifies the collections of information that OMB has approved. Therefore, no PRA submissions to OMB are required, with the exception of non-substantive submissions to OMB to adjust the number of respondents.

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4 (2 U.S.C. 1532) (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating any rule likely to result in a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year. If a budgetary impact statement is required, Section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OCC has determined that this proposed rule will not result in expenditures by state, local, and tribal governments, or by the private sector, of $100 million or more in any one year. Accordingly, this proposal is not subject to Section 202 of the Unfunded Mandates Act.

List of Subjects

12 CFR Part 4

National banks, Organization and functions, Reporting and recordkeeping requirements, Administrative practice and procedure, Freedom of Information Act, Records, Non-public information, Post-employment activities.

12 CFR Part 5

Administrative practice and procedure, National banks, Reporting and recordkeeping requirements, Securities.

12 CFR Part 7

Computer technology, Credit, Insurance, Investments, National banks, Reporting and recordkeeping requirements, Securities, Surety bonds.

12 CFR Part 8

National banks, Reporting and recordkeeping requirements.

12 CFR Part 28

Foreign banking, National banks, Reporting and recordkeeping requirements.

12 CFR Part 34

Mortgages, National banks, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, chapter I of title 12 of the Code of Federal Regulations is proposed to be amended as follows:

PART 4—ORGANIZATION AND FUNCTIONS, AVAILABILITY AND RELEASE OF INFORMATION, CONTRACTING OUTREACH PROGRAM, POST-EMPLOYMENT RESTRICTIONS

1. The authority citation for part 4 is revised to read as follows:

Authority: 12 U.S.C. 1, 12 U.S.C. 93a, 12 U.S.C. 5321, 12 U.S.C. 5412, and 12 U.S.C. 5414. Subpart A also issued under 5 U.S.C. 552. Subpart B also issued under 5 U.S.C. 552; E.O. 12600 (3 CFR 1987 Comp., p. 235). Subpart C also issued under 5 U.S.C. 301, 552; 12 U.S.C. 161, 481, 482, 484(a), 1442, 1462a, 1463, 1464 1817(a)(2) and (3), 1818(u) and (v), 1820(d)(6), 1820(k), 1821(c), 1821(o), 1821(t), 1831m, 1831p–1, 1831o, 1867, 1951 *et seq.,* 2601 *et seq.,* 2801 *et seq.,* 2901 *et seq.,* 3101 *et seq.,* 3401 *et seq.;* 15 U.S.C. 77uu(b), 78q(c)(3); 18 U.S.C. 641, 1905, 1906; 29 U.S.C. 1204; 31 U.S.C. 5318(g)(2), 9701; 42 U.S.C. 3601; 44 U.S.C. 3506, 3510. Subpart D also issued under 12 U.S.C. 1833e. Subpart E is also issued under 12 U.S.C. 1820(k).

2. Revise § 4.2 to read as follows:

§ 4.2 Office of the Comptroller of the Currency.

The OCC is charged with assuring the safety and soundness of, and compliance with laws and regulations, fair access to financial services, and fair treatment of customers by, the institutions and other persons subject to its jurisdiction. The OCC examines, supervises, and regulates national banks, Federal branches and agencies of foreign banks, and Federal savings associations to carry out this mission. The OCC also issues rules and regulations applicable to state savings associations.

§ 4.3 [Amended]

3. Amend § 4.3 in the third sentence by adding "a member of the Financial Stability Oversight Council," after "Federal Deposit Insurance Corporation,".

4. Revise § 4.4 to read as follows:

§ 4.4 Washington office and Web site.

The Washington office of the OCC is the main office and headquarters of the OCC. The Washington office directs OCC policy, oversees OCC operations, and is responsible for the direct supervision of certain national banks and Federal savings associations, including the largest national banks and the largest Federal savings associations (through the Large Bank Supervision Department); other national banks and Federal savings associations requiring special supervision; and Federal branches and agencies of foreign banks (through the Large Bank Supervision Department). The Washington office is located at 250 E Street, SW.,

[52] *See* OMB Control numbers 1557–0014, 1557–0200 and 1557–0223.

Washington, DC 20219. The OCC's Web site is at *http://www.occ.gov.*

5. Amend § 4.5 by:

a. Revising paragraph (a); and

b. In paragraph (b), adding "and savings association" after "support the bank".

The revision reads as follows:

§ 4.5 District and field offices.

(a) *District offices.* Each district office of the OCC is responsible for the direct supervision of the national banks and Federal savings associations in its district, with the exception of the national banks and Federal savings associations supervised by the Washington office. The four district offices cover the United States, Puerto Rico, the Virgin Islands, Guam, and the Northern Mariana Islands. The office address and the geographical composition of each district follows:

District	Office address	Geographical composition
Northeastern District	Office of the Comptroller of the Currency, 340 Madison Avenue, 5th Floor New York, NY 10173–0002.	Connecticut, Delaware, District of Columbia, northeast Kentucky, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, Vermont, the Virgin Islands, Virginia, and West Virginia.
Central District	Office of the Comptroller of the Currency, One Financial Place, Suite 2700, 440 South LaSalle Street, Chicago, IL 60605.	Illinois, Indiana, central and southern Kentucky, Michigan, Minnesota, eastern Missouri, North Dakota, Ohio, and Wisconsin.
Southern District	Office of the Comptroller of the Currency, 500 North Akard Street, Suite 1600, Dallas, TX 75201.	Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, Oklahoma, Tennessee, and Texas.
Western District	Office of the Comptroller of the Currency, 1225 17th Street, Suite 300, Denver, CO 80202.	Alaska, Arizona, California, Colorado, Hawaii, Idaho, Iowa, Kansas, western Missouri, Montana, Nebraska, Nevada, New Mexico, Northern Mariana Islands, Oregon, South Dakota, Utah, Washington, Wyoming, and Guam.

6. Amend § 4.6 by:

a. Revising the section heading;

b. In paragraph (a):

i. Adding in the first sentence "and Federal savings associations" after "examines national banks"; "(with respect to national banks) and 1463(a)(1) and 1464 (with respect to Federal savings associations)" after "12 U.S.C. 481"; and "(with respect to national banks and Federal savings associations)" after "12 U.S.C. 1820(d)"; and

ii. Adding in the second sentence "and Federal savings association" after "every national bank".

c. In paragraph (b):

i. Adding in the introductory text "or a Federal savings association" after "a national bank";

ii. Adding in paragraphs (b)(1), (b)(2), (b)(4), and (b)(5) "or Federal savings association" after "bank" each time it appears; and

iii. In paragraph (b)(3) removing ", the OCC" in the introductory text and revising paragraphs (b)(3)(i) and (b)(3)(ii); and

iv. In paragraph (b)(4), adding ", OTS" after "OCC".

d. In paragraph (c), adding "or Federal savings association" after "national bank".

The revisions read as follows:

§ 4.6 Frequency of examination of national banks and Federal savings associations.

* * * * *

(b) * * *

(3) * * *

(i) The bank or Federal savings association was assigned a rating of 1 or 2 for management as part of the bank's or association's rating under the Uniform Financial Institutions Rating System; and

(ii) The bank or Federal savings association was assigned a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System.

* * * * *

§ 4.7 [Amended]

7. In paragraph (a) of § 4.7, remove the phrase "(h) and (i)" and add in its place "(g) and (h)".

8. Amend § 4.11 by:

a. In paragraph (a), removing "industry" and adding in its place "and savings association industries" after the word "banking";

b. Adding paragraph (b)(4), as follows.

§ 4.11 Purpose and scope.

* * * * *

(b) * * *

(4) This subpart does not apply to FOIA requests filed with the Office of Thrift Supervision (OTS) before July 21, 2011. These requests are subject to the rules of the OTS in effect on July 20, 2011.

9. Amend § 4.12 by:

a. Removing "and" at the end of paragraph (b)(8) and removing the period and adding "; and" at the end of paragraph (b)(9); and

b Adding paragraph (10), as follows:

§ 4.12 Information available under the FOIA.

* * * * *

(b) * * *

(10) Any OTS information similar to that listed in paragraphs (b)(1) through (9) of this section, to the extent this information is in the possession of the OCC.

* * * * *

10. Amend § 4.14 by:

a. Adding in paragraph (a)(7), footnote. 1, first sentence, "and Federal savings associations" after "banks" and removing ", such as the Consolidated Report of Condition and Income (FFIEC 031–034),";

b. Adding in paragraph (a)(9) ", or parts 563d and 563g of chapter V" after "of this chapter";

c. Removing "and" at the end of paragraph (a)(10);

d. Removing the period at the end of paragraph (a)(11) and adding in its place "; and";

e. Adding paragraph (a)(12); and

f. Revising paragraph (c).

The addition and revision read as follows:

§ 4.14 Public inspection and copying.

(a) * * *

(12) Any OTS information similar to that listed in paragraphs (a)(1) through (a)(12) of this section, to the extent this information is in the possession of the OCC.

* * * * *

(c) *Addresses.* The information described in paragraphs (a)(1) through (10) and (a)(12) of this section is available from the Disclosure Officer, Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219. The information described in paragraph (a)(11) of this section in the case of both banks and Federal savings associations is available from the Licensing Manager

at the appropriate district office at the address listed in § 4.5(a), or in the case of banks and savings associations supervised by Large Bank Supervision, from the Large Bank Licensing Expert, Licensing Department, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

§ 4.15 [Amended]

11. Amend § 4.15 by:

a. Adding in paragraph (b)(1) "through the OCC's FOIA Web portal at *https://appsec.occ.gov/publicaccesslink/palMain.aspx,* or" after "must submit the request or appeal"; and

b. Removing in paragraph (c)(2) "OCC's Director of Communications or that person's" and adding in its place "Comptroller or the Comptroller's".

§ 4.16 [Amended]

12. Amend § 4.16:

a. In paragraph (b)(1)(i) by adding "or to the Federal Home Loan Bank Board, the predecessor of the OTS," after "OCC";

b. In paragraph (b)(1)(i)(C) by removing "OCC" and adding "from the OCC or the Federal Home Loan Bank Board, the predecessor of the OTS" after "confidentiality";

c. In paragraph (b)(1)(ii) by adding "or to the OTS (or the Federal Home Loan Bank Board, its predecessor agency)" after "OCC";

d. In paragraph (b)(1)(ii)(B) by adding "or to the OTS (or the Federal Home Loan Bank Board, its predecessor agency)" after "OCC"; and

e. In paragraph (b)(2)(iv) by adding "or the OTS (or the Federal Home Loan Bank Board, its predecessor agency)" after "OCC".

13. Revise § 4.18 to read as follows:

§ 4.18 How to track a FOIA request.

(a) *Tracking number.* (1) *Internet requests.* The OCC will issue a tracking number to all FOIA requesters automatically upon receipt of the request (as described in § 4.15(g)) by the OCC's Communications Department via the OCC's Freedom of Information Request Portal, *https://appsec.occ.gov/publicaccesslink/palMain.aspx.* The tracking number will be sent via electronic mail to the requester.

(2) *If a requester does not have Internet access.* The OCC will issue a tracking number to FOIA requesters without Internet access within 5 days of the receipt of the request (as described in § 4.15(g)) in the OCC's Communications Department. The OCC will mail the tracking number to the requester's physical address, as provided in the FOIA request.

(b) *Status of request.* FOIA requesters may track the progress of their requests via the OCC's Freedom of Information Request Portal, *https://appsec.occ.gov/publicaccesslink/palMain.aspx.* Requesters without Internet access may continue to contact the Disclosure Officer, Communications Division, Office of the Comptroller of the Currency, at (202) 874–4700 to check the status of their FOIA request(s).

14. Amend § 4.31 by:

a. Adding in paragraph (a)(5) "Federal savings associations," after "national banks,";

b. Adding in paragraph (b)(3) "or state savings association" after "state bank"; and

c. Adding paragraph (b)(5) to read as follows:

§ 4.31 Purpose and scope.

* * * * *

(b) * * *

(5) This subpart does not apply to requests for non-public information filed with the Office of Thrift Supervision (OTS) before July 21, 2011. These requests are subject to the rules of the OTS in effect on July 20, 2011.

15. Amend § 4.32 by:

a. Revising paragraph (b)(1)(i);

b. In paragraph (b)(1)(ii) adding "or the OTS" after "OCC", removing "the OCC's", and adding "either agency's" after "with";

c. Adding in paragraph (b)(1)(iii) "or OTS" after "compiled by the OCC";

d. Revising paragraph (b)(1)(v);

e. Adding in paragraph (b)(1)(vi) ", Federal savings associations, and savings and loan holding companies" after "national banks";

f. Removing the second sentence in paragraph (b)(2); and

g. Revising paragraph (e);

The revisions read as follows:

§ 4.32 Definitions.

* * * * *

(b) * * *

(1) * * *

(i) A record created or obtained:

(A) By the OCC in connection with the OCC's performance of its responsibilities, such as a record concerning supervision, licensing, regulation, and examination of a national bank, a Federal savings association, a bank holding company, a savings and loan holding company, or an affiliate; or

(B) By the OTS in connection with the OTS's performance of its responsibilities, such as a record concerning supervision, licensing, regulation, and examination of a Federal savings association, a savings and loan holding company, or an affiliate;

* * * * *

(v) Testimony from, or an interview with, a current or former OCC employee, officer, or agent or a former OTS employee, officer, or agent concerning information acquired by that person in the course of his or her performance of official duties with the OCC or OTS or due to that person's official status at the OCC or OTS; and

* * * * *

(e) *Supervised entity* includes a national bank or Federal savings association, a subsidiary of a national bank or Federal savings association, or a Federal branch or agency of a foreign bank licensed by the OCC as defined under 12 CFR 28.11(g) and (h), or any other entity supervised by the OCC.

* * * * *

16. Revise § 4.35(a)(5) to read as follows:

§ 4.35 Consideration of requests.

(a) * * *

(5) *Notice to subject national banks and Federal savings associations.* Following receipt of a request for non-public OCC information, the OCC generally notifies the national bank or Federal savings association that is the subject of the requested information, unless the OCC, in its discretion, determines that to do so would advantage or prejudice any of the parties in the matter at issue.

* * * * *

17. Amend § 4.37 by:

a. In paragraph (a):

i. Adding in the heading "; former OTS employees or agents" after "former OCC employees or agents";

ii. Adding "or former OTS employee or agent," after "former OCC employee or agent" each time that phrase appears;

iii. Adding at the end of paragraph (a)(2)(ii), "and former OTS employees or agents";

b. In paragraph (b):

i. Adding in paragraph (b)(1)(i) introductory text "Federal savings association," after "national bank,";

ii. Revising paragraph (b)(2) introductory text;

iii. Adding at the end of paragraph (b)(2)(ii) "or Federal savings association";

iv. Adding in paragraph (b)(3) introductory text " Federal savings association," after "national bank,"; and

c. In paragraph (c), adding in the first sentence "and state savings association" after "state bank".

The revision reads as follows:

§ 4.37 Persons and entities with access to OCC information; prohibition on dissemination.

* * * * *

(b) * * *

(2) *Exception for national banks and Federal savings associations.* When

necessary or appropriate for business purposes, a national bank, Federal savings association, or holding company, or any director, officer, or employee thereof, may disclose non-public OCC information, including information contained in, or related to, OCC reports of examination, to a person or organization officially connected with the bank or Federal savings association as officer, director, employee, attorney, auditor, or independent auditor. A national bank, Federal savings association, or holding company or a director, officer, or employee thereof, may also release non-public OCC information to a consultant under this paragraph if the consultant is under a written contract to provide services to the bank or Federal savings association and the consultant has a written agreement with the bank or Federal savings association in which the consultant:

* * * * *

§ 4.39 [Amended]

18. In § 4.39(a), add "OCC or OTS" after "former".

APPENDIX A TO SUBPART C OF PART 4 [AMENDED]

19. In Appendix A to Subpart C of Part 4:

a. In I. Model Stipulation, second paragraph, add ", 1463(a)(1), 1464(a)(1), and 1464(d)(1)(B)(i)" after 12 U.S.C. 481"; and

b. In II. Model Protective Order, add ", 1463(a)(1), 1464(a)(1), and 1464(d)(1)(B)(i)" after 12 U.S.C. 481" in the second paragraph.

20. Amend § 4.73 by:

a. In the definition of "Consultant":

i. Adding "savings association," after "national bank,";

ii. Adding "savings and loan holding company," after "bank holding company," each time it appears; and

iii. Adding "savings association," after "such bank,";

b. In the definition of "Control" adding "or in section 10 of the Home Owners' Loan Act (12 U.S.C. 1467a), as applicable under the circumstances" after "1841(a))";

c. Adding definitions of "Savings association" and "Savings and loan holding company" in alphabetical order; and

d. Revising the definition of "*Senior examiner*".

The additions and revisions read as follows:

§ 4.73 Definitions.

* * * * *

Savings association has the meaning given in section 3 of the FDI Act (12 U.S.C. 1813(b)(1)).

Savings and loan holding company means any company that controls a savings association or any other company that is a savings and loan holding company (as provided in section 10 of the Home Owners' Loan Act (12 U.S.C. 1467a)).

Senior examiner. For purposes of this subpart, an officer or employee of the OCC is considered to be the "senior examiner" for a particular national bank or savings association if—

(1) The officer or employee has been authorized by the OCC to conduct examinations on behalf of the OCC or had been authorized by the Office of Thrift Supervision (OTS) to conduct examinations on behalf of the OTS;

(2) The officer or employee has been assigned continuing, broad, and lead responsibility for examining the national bank or savings association; and

(3) The officer's or employee's responsibilities for examining the national bank or savings association—

(i) Represent a substantial portion of the officer's or employee's assigned responsibilities; and

(ii) Require the officer or employee to interact routinely with officers or employees of the national bank or savings association, or its affiliates.

21. Effective July 21, 2012, in § 4.73, revise the definition of *Senior examiner* to read as follows:

§ 4.73 Definitions.

* * * * *

Senior examiner. For purposes of this subpart, an officer or employee of the OCC is considered to be the "senior examiner" for a particular national bank or savings association if—

(1) The officer or employee has been authorized by the OCC to conduct examinations on behalf of the OCC;

(2) The officer or employee has been assigned continuing, broad, and lead responsibility for examining the national bank or savings association; and

(3) The officer's or employee's responsibilities for examining the national bank or savings association—

(i) Represent a substantial portion of the officer's or employee's assigned responsibilities;

(ii) Require the officer or employee to interact routinely with officers or employees of the national bank or savings association, or its affiliates."

22. Revise § 4.74 to read as follows:

§ 4.74 One-year post-employment restrictions.

An officer or employee of the OCC who serves, or former officer or employee of the OTS who served, as the senior examiner of a national bank or savings association for two or more months during the last twelve months of such individual's employment with the OCC or OTS may not, within one year after leaving the employment of the OCC or OTS, knowingly accept compensation as an employee, officer, director or consultant from the national bank, savings association, or any company (including a bank holding company or savings and loan holding company) that controls the national bank or savings association.

23. Effective July 21, 2012, revise § 4.74 to read as follows:

§ 4.74 One-year post-employment restrictions.

An officer or employee of the OCC who serves as the senior examiner of a national bank or savings association for two or more months during the last twelve months of such individual's employment with the OCC may not, within one year after leaving the employment of the OCC, knowingly accept compensation as an employee, officer, director or consultant from the national bank, savings association, or any company (including a bank holding company or savings and loan holding company) that controls the national bank or savings association.

24. Revise § 4.75 to read as follows:

§ 4.75 Waivers.

The post-employment restrictions set forth in section 10(k) of the FDI Act (12 U.S.C. 1820(k)) and § 4.74 do not apply to any officer or employee of the OCC, or any former officer or employee of the OCC or OTS, if the Comptroller of the Currency certifies, in writing and on a case-by-case basis, that granting the individual a waiver of the restrictions would not affect the integrity of the OCC's supervisory program.

25. Effective July 21, 2012, revise § 4.75 to read as follows:

§ 4.75 Waivers.

The post-employment restrictions set forth in section 10(k) of the FDI Act (12 U.S.C. 1820(k)) and § 4.74 do not apply to any officer or employee of the OCC, or any former officer or employee of the OCC, if the Comptroller of the Currency certifies, in writing and on a case-by-case basis, that granting the individual a waiver of the restrictions would not affect the integrity of the OCC's supervisory program.

26. Amend § 4.76 by revising paragraph (a) to read as follows:

§ 4.76 Penalties.

(a) *Penalties under section 10(k) of FDI Act (12 U.S.C. 1820(k)).* If a senior examiner of a national bank or savings

association, after leaving the employment of the OCC or OTS, accepts compensation as an employee, officer, director, or consultant from that bank, savings association, or any company (including a bank holding company or savings and loan holding company) that controls that bank or savings association in violation of § 4.74 then the examiner shall, in accordance with section 10(k)(6) of the FDI Act (12 U.S.C. 1820(k)(6)), be subject to one of the following penalties—

(1) An order—

(i) Removing the individual from office or prohibiting the individual from further participation in the affairs of the relevant national bank, savings association, bank holding company, savings and loan holding company, or other company that controls such institution for a period of up to five years; and

(iii) Prohibiting the individual from participating in the affairs of any insured depository institution for a period of up to five years; or

(2) A civil monetary penalty of not more than $250,000.

* * * * *

27. Effective July 21, 2012, amend § 4.76 by revising paragraph (a) to read as follows:

§ 4.76 Penalties.

(a) *Penalties under section 10(k) of FDI Act (12 U.S.C. 1820(k)).* If a senior examiner of a national bank or savings association, after leaving the employment of the OCC, accepts compensation as an employee, officer, director, or consultant from that bank, savings association, or any company (including a bank holding company or savings and loan holding company) that controls that bank or savings association in violation of § 4.74 then the examiner shall, in accordance with section 10(k)(6) of the FDI Act (12 U.S.C. 1820(k)(6)), be subject to one of the following penalties—

(1) An order—

(i) Removing the individual from office or prohibiting the individual from further participation in the affairs of the relevant national bank, savings association, bank holding company, savings and loan holding company, or other company that controls such institution for a period of up to five years; and

(iii) Prohibiting the individual from participating in the affairs of any insured depository institution for a period of up to five years; or

(2) A civil monetary penalty of not more than $250,000.

* * * * *

PART 5—RULES, POLICIES, AND PROCEDURES FOR CORPORATE ACTIVITIES

28. The authority citation for part 5 continues to read as:

Authority: 12 U.S.C. 1 *et seq.,* 93a, 215a–2, 215a–3, 481, and section 5136A of the Revised Statutes (12 U.S.C. 24a).

29. Amend § 5.34 by revising paragraph (a) and the first sentence of paragraph (e)(3) to read as follows:

§ 5.34 Operating subsidiaries.

Authority: 12 U.S.C. 24 (Seventh), 24a, 25b, 93a, 3101 *et seq.*

* * * * *

(e) * * *

(3) *Examination and supervision.* An operating subsidiary conducts activities authorized under this section pursuant to the same authorization, terms and conditions that apply to the conduct of such activities by its parent national bank, except as otherwise provided with respect to the application of state law under sections 1044(e) and 1045 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 25b). * * *

* * * * *

30a. Amend § 5.50 by redesignating paragraph (f)(6) as paragraph (f)(7) and adding a new paragraph (f)(6) to read as follows:

§ 5.50 Change in bank control; reporting of stock loans.

* * * * *

(f) * * *

(6) *Disapproval of notice involving credit card banks or trust banks.* (i) *In general.* The OCC shall disapprove a notice if the proposed change in control occurs before July 21, 2013, and would result in the direct or indirect control of a credit card bank or trust bank, as defined in section 2(c)(2)(F) and (D) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2)(F) and (D)), by a commercial firm. For purposes of this paragraph a company is a "commercial firm" if the annual gross revenues derived by the company and all of its affiliates from activities that are financial in nature (as defined in section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k))) and, if applicable, from the ownership or control of one or more insured depository institutions, represent less than 15 percent of the consolidated annual gross revenues of the company.

(ii) *Exception to disapproval.* Paragraph (6)(i) shall not apply to a proposed change in control of a credit card bank or trust bank that:

(A)(*1*) Is in danger of default, as determined by the OCC;

(*2*) Results from the merger or whole acquisition of a commercial firm that directly or indirectly controls the credit card bank or trust bank in a bona fide merger with or acquisition by another commercial firm, as determined by the OCC; or

(*3*) Results from the acquisition of voting shares of a publicly traded company that controls a credit card bank or trust bank, if, after the acquisition, the acquiring shareholder (or group of shareholders acting in concert) holds less than 25 percent of any class of the voting shares of the company; and

(B) Has obtained all regulatory approvals otherwise required for such change of control under any applicable Federal or state law, including review pursuant to section 7(j) of the Federal Deposit Insurance Act (12 U.S.C. 1817(j)) and 12 CFR 5.50.

* * * * *

§ 5.50 [Amended]

30b. Effective July 21, 2013, amend § 5.50 by removing paragraph (f)(6) and redesignating paragraph (f)(7) as paragraph (f)(6).

PART 7—BANK ACTIVITIES AND OPERATIONS

31. The authority citation for part 7 is revised to read as follows:

Authority: 12 U.S.C. 1 *et seq.,* 25b, 71, 71a, 92, 92a, 93, 93a, 481, 484, 1465, 1818 and 5412(b)(2)(B).

Subpart D—Preemption

32. Amend § 7.4000 by:

a. Revising the first sentence of paragraph (a)(1);

b. Revising paragraph (a)(2)(iv);

c. Redesignating paragraphs (b) and (c) as paragraphs (c) and (d), respectively;

d. Adding a new paragraph (b); and

e. Revising newly designated paragraph (c)(2).

The additions and revisions read as follows:

§ 7.4000 Visitorial powers.

(a) * * *

(1) Under 12 U.S.C. 484, only the OCC or an authorized representative of the OCC may exercise visitorial powers with respect to national banks. * * *

(2) * * *

(iv) Investigating or enforcing compliance with any applicable Federal or state laws concerning those activities.

* * * * *

(b) *Exclusion.* In accordance with the decision of the Supreme Court in *Cuomo* v. *Clearing House Assn., L. L. C.,* 129 S. Ct. 2710 (2009), an action against

a national bank in a court of appropriate jurisdiction brought by a state attorney general (or other chief law enforcement officer) to enforce a non-preempted state law against a national bank and to seek relief as authorized thereunder is not an exercise of visitorial powers under 12 U.S.C. 484.

(c) * * *

(2) *Exception for courts of justice.* National banks are subject to such visitorial powers as are vested in the courts of justice. This exception pertains to the powers inherent in the judiciary.

* * * * *

§ 7.4006 [Removed and Reserved]

33. Remove and reserve § 7.4006.

34. Amend § 7.4007 by:

a. Removing paragraph (b)(1);

b. Redesignating paragraph (b)(2) introductory text as paragraph (b) introductory text;

c. Redesignating paragraphs (b)(2)(i) through (vii) as paragraphs (b)(1) through (7), respectively;

d. Revising paragraph (c) introductory text;

e. Revising footnote 5 in paragraph (c)(3); and

f. Revising paragraph (c)(8).

The revisions read as follows:

§ 7.4007 Deposit-taking.

* * * * *

(c) *State laws that are not preempted.* State laws on the following subjects are not inconsistent with the deposit-taking powers of national banks and apply to national banks to the extent consistent with the decision of the Supreme Court in *Barnett Bank of Marion County, N.A.* v. *Nelson, Florida Insurance Commissioner, et al.* 517 U.S. 25 (1996):

* * * * *

(3) Criminal law; [3]

[3] *But see* the distinction drawn by the Supreme Court in *Easton* v. *Iowa,* 188 U.S. 220, 238 (1903), where the Court stated that "[u]ndoubtedly a state has the legitimate power to define and punish crimes by general laws applicable to all persons within its jurisdiction * * *. But it is without lawful power to make such special laws applicable to banks organized and operating under the laws of the United States." *Id.* at 239 (holding that Federal law governing the operations of national banks preempted a state criminal law prohibiting insolvent banks from accepting deposits).

* * * * *

(8) Any other law that the OCC determines to be applicable to national banks in accordance with the decision of the Supreme Court in *Barnett Bank of Marion County, N.A.* v. *Nelson, Florida Insurance Commissioner, et al.* 517 U.S. 25 (1996), or that is made applicable by Federal law.

35. Amend § 7.4008 by:

a. Removing paragraph (d)(1);

b. Redesignating paragraph (d)(2) introductory text as paragraph (d) introductory text;

c. Redesignating paragraphs (d)(2)(i) through (x) as paragraphs (d)(1) through (10), respectively; and

d. Revising paragraphs (e) introductory text; and (e)(8).

The revisions read as follows:

§ 7.4008 Lending.

* * * * *

(e) *State laws that are not preempted.* State laws on the following subjects are not inconsistent with the non-real estate lending powers of national banks and apply to national banks to the extent consistent with the decision of the Supreme Court in *Barnett Bank of Marion County, N.A.* v. *Nelson, Florida Insurance Commissioner, et al.,* 517 U.S. 25 (1996):

* * * * *

(8) Any other law that the OCC determines to be applicable to national banks in accordance with the decision of the Supreme Court in *Barnett Bank of Marion County, N.A.* v. *Nelson, Florida Insurance Commissioner, et al.,* 517 U.S. 25 (1996) or that is made applicable by Federal law.

§ 7.4009 [Removed and Reserved]

36. Remove and reserve § 7.4009.

37. Add § 7.4010 to read as follows:

§ 7.4010 Applicability of state law and visitorial powers to Federal savings associations and subsidiaries.

(a) In accordance with section 1046 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 25b), state laws apply to Federal savings associations and their subsidiaries to the same extent and in the same manner that those laws apply to national banks and their subsidiaries.

(b) In accordance with section 1047 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 1465), the provisions of section 5136C(i) of the Revised Statutes regarding visitorial powers apply to Federal savings associations and their subsidiaries to the same extent and in the same manner as if they were national banks or national bank subsidiaries.

PART 8—ASSESSMENT OF FEES

38. The authority citation for part 8 is revised to read as follows:

Authority: 12 U.S.C. 16, 93a, 481, 482, 1467, 1831c, 1867, 3102, 3108, and 5412(b)(1)(B); and 15 U.S.C. 78c and 78 *l.*

39. Section 8.1 is revised to read as follows:

§ 8.1 Scope and application.

The assessments contained in this part are made pursuant to the authority contained in 12 U.S.C. 16, 93a, 481, 482, 1467, 1831c, 1867, 3102, and 3108; and 15 U.S.C. 78c and 78*l.*

40. Section 8.2 is amended by:

a. Adding in paragraph (a) introductory text "and each Federal savings association" after "each national bank" both times it appears;

b. Adding in the table that follows paragraph (a), in the caption above the first two columns, "or Federal savings association's" after "If the bank's";

c. Adding in paragraph (a)(1) in the first sentence "and every Federal savings association" after "Every national bank"; inserting, in the second sentence, "or Federal savings association's" after "A bank's"; and inserting, in the third sentence, "or Federal saving association" after "bank";

d. Adding in paragraph (a)(2) "or Federal savings association" after "bank;

e. Adding in paragraph (a)(3) "or Federal savings association's" after "bank's";

f. Revising paragraph (a)(5) to read as follows;

g. Adding in paragraph (a)(6)(i) "or non-lead Federal savings association" after "each non-lead bank";

h. Revising paragraphs (a)(6)(ii)(A) and (B);

i. Adding in paragraph (a)(6)(ii)(C) "with respect to national banks" after "Control and company";

j. Adding paragraph (a)(6)(ii)(D);

k. Revising paragraph (c) heading;

l. In paragraph (c)(1), by adding "and independent credit card Federal savings association" after "independent credit card bank"; and inserting "or Federal savings association" after "owned by the bank";

m. Revising paragraph (c)(2) heading;

n. Adding in paragraph (c)(2):

i. "and an independent credit card Federal savings association" after "independent credit card bank";

ii. "or Federal savings association" after "notwithstanding that the bank"; and

iii. "or full-service Federal savings association," after "full-service national bank";

o. Adding in paragraph (c)(3)(i) ", with respect to national banks," after "Affiliate";

p. Redesignating paragraphs (c)(3)(ii) through (v) as paragraphs (c)(3)(iii), (c)(3)(iv), (c)(3)(vi), and (c)(3)(viii) respectively;

q. Adding a new paragraph (c)(3)(ii);

r. Revising newly redesignated paragraph (c)(3)(iii);

s. Adding new paragraph (c)(3)(v);

t. Adding paragraph (c)(3)(vii);

u. In newly redesignated paragraph (c)(3)(viii) adding "or an independent credit card Federal savings association" after "independent credit card bank", and by adding "or Federal savings association's" after "bank's";

v. Adding in paragraph (c)(4) "and independent credit card Federal savings associations" after "Independent credit card banks"; and

w. Revising paragraph (d) heading and adding in paragraphs (d)(1) and (d)(2), "or Federal savings association" after "in the case of any bank" each time it appears.

The additions and revisions read as follows:

§ 8.2 Semiannual assessment.

(a) * * *

(5) The specific marginal rates and complete assessment schedule will be published in the "Notice of Comptroller of the Currency Fees," provided for at § 8.8 of this part. Each semiannual assessment is based upon the total assets shown in the national bank's or Federal savings association's most recent "Consolidated Reports of Condition and Income" (Call Report) or "Thrift Financial Report," as appropriate, preceding the payment date. Each bank or Federal savings association subject to the jurisdiction of the Comptroller of the Currency on the date of the second or fourth quarterly Call Report or Thrift Financial Report, as appropriate, required by the Office under 12 U.S.C. 161 and 12 U.S.C. 1464(v) is subject to the full assessment for the next six month period.

* * * * *

(b) * * *

(6) * * *

(ii) * * *

(A) *Lead bank or lead Federal savings association* means the largest national bank or Federal savings association controlled by a company, based on a comparison of the total assets held by each national bank or Federal savings association controlled by that company as reported in each bank's or savings association's Call Report or Thrift Financial Report, as appropriate, filed for the quarter immediately preceding the payment of a semiannual assessment.

(B) *Non-lead bank or non-lead Federal savings association* means a national bank or Federal savings association that is not the lead bank or lead savings association controlled by a company that controls two or more national banks or savings associations.

* * * * *

(D) *Control* and *company* with respect to Federal savings associations have the same meanings as these terms have in section 10(a) of the Home Owners' Loan Act (12 U.S.C. 1467a(a)).

* * * * *

(c) *Additional assessment for independent credit card banks and independent credit card Federal savings associations.* * * *

(2) *Credit card banks and independent credit card Federal savings associations affiliated with full-service national banks or Federal savings associations.* * * *

* * * * *

(3) * * *

(ii) *Affiliate,* with respect to Federal savings associations, has the same meaning as in 12 U.S.C. 1462(9).

(iii) *Engaged primarily in card operations* means a bank described in section 2(c)(2)(F) of the Bank Holding Company Act (12 U.S.C. 1841(c)(2)(F)) or a bank or a Federal savings association whose ratio of total gross receivables attributable to the bank's or Federal savings association's balance sheet assets exceeds 50%."

* * * * *

(v) *Full-service Federal savings association* is a Federal savings association that generates more than 50% of its interest and non-interest income from activities other than credit card operations or trust activities and is authorized according to its charter to engage in all types of activities permissible for Federal savings associations.

* * * * *

(vii) *Independent credit card Federal savings association* is a Federal savings association that engages primarily in credit card operations and is not affiliated with a full-service Federal savings association.

* * * * *

(d) *Surcharge based on the condition of the bank or Federal savings association.* * * *

* * * * *

41. Section 8.6 is amended by:

a. Revising paragraph (a) introductory text;

b. Adding in paragraph (a)(1) "and Federal savings associations" after "national banks";

c. Adding in paragraph (a)(2) ", and Federal savings associations" after "foreign banks";

d. Adding in paragraph (a)(3) "or Federal savings association" after "particular bank"; adding "or Federal savings association's" after "significance to the bank's"; and adding "or Federal savings association" after "which the bank";

e. Adding in paragraph (a)(4) ", Federal savings associations," after "banks" and removing the word "and" at the end of the paragraph;

f. Removing in paragraph (a)(5) the period at the end of the sentence and adding the phrase "; and" in its place;

g. Adding paragraph (a)(6);

h. Revising the paragraph (c) heading and paragraph (c)(1) introductory text heading;

i. Adding in paragraph (c)(1) introductory text "and independent trust Federal savings associations" after "independent trust banks";

j. Adding in paragraph (c)(1)(i) and (c)(1)(ii) "and independent trust Federal savings associations" after "independent trust banks";

k. Adding in paragraph (c)(1)(iii) "and independent trust Federal savings association" after "independent trust bank";

l. Revising the headings of paragraph (c)(1)(ii) and (c)(1)(iii);

m. Revising paragraph (c)(2);

n. Adding in paragraph (c)(3)(i) "with respect to a national bank" after "Affiliate";

o. Redesignating paragraphs (c)(3)(ii), (c)(3)(iii), and (c)(3)(iv) as paragraphs (c)(3)(iii), (c)(3)(v), and (c)(3)(vii), respectively and removing the "and" at the end of newly designated paragraph (v);

p. Adding new paragraphs (c)(3)(ii), (c)(3)(iv), and (c)(3)(vi);

q. Revising, effective from July 21, 2011 to December 31, 2011, newly designated paragraph (c)(3)(vii) to read as follows; and

r. Adding paragraph (c)(3)(viii).

The additions and revisions read as follows:

§ 8.6 Fees for special examinations and investigations.

(a) *Fees.* Pursuant to the authority contained in 12 U.S.C. 16, 481, 482, 1467, and 1831c, the Office of the Comptroller of the Currency may assess a fee for:

* * * * *

(6) Conducting examinations of depository-institution permissible activities of nondepository institution subsidiaries of depository institution holding companies pursuant to section 605(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 1831c).

* * * * *

(c) *Additional assessments on trust banks and trust Federal savings associations*—(1) *Independent trust banks and independent trust savings associations.* * * *

* * * * *

(ii) *Additional amount for independent trust banks and*

independent trust Federal savings associations with fiduciary and related assets in excess of $1 billion. * * *

(iii) *Surcharge based on the condition of the bank or of the Federal savings association.* * * *

(2) *Trust banks affiliated with full-service national banks and trust Federal savings associations affiliated with full-service Federal savings associations.* The OCC will assess a trust bank and a trust Federal savings association in accordance with paragraph (c)(1) of this section, notwithstanding that the bank is affiliated with a full-service national bank, or that the Federal savings association is affiliated with a full-service Federal savings association, if the OCC concludes that the affiliation is intended to evade the assessment regulation.

(3) * * *

(ii) *Affiliate,* with respect to Federal savings associations, has the same meaning as in 12 U.S.C. 1462(9).

* * * * *

(iv) *Full-service Federal savings association* is a Federal savings association that generates more than 50% of its interest and non-interest income from activities other than credit card operations or trust activities and is authorized according to its charter to engage in all types of activities permissible for Federal savings associations.

* * * * *

(vi) *Independent trust Federal savings association* is a Federal savings association that has trust powers, does not primarily offer full-service banking, and is not affiliated with a full-service Federal savings association;

(vii) *Fiduciary and related assets for national banks* are those assets reported on Schedule RC–T of FFIEC Forms 031 and 041, Line 10 (columns A and B) and Line 11 (column B), any successor form issued by the FFIEC, and any other fiduciary and related assets defined in the Notice of Comptroller of the Currency Fees; and

(viii) *Fiduciary and related assets for Federal savings associations* are those assets reported on Schedule FS of OTS Form 1313, Line FS21, any successor form issued by the OTS, and any other fiduciary and related assets defined in the Notice of Comptroller of the Currency Fees.

42. Effective December 31, 2011, add the word "and" at the end of paragraph (vi), revise paragraph (c)(3)(vii) to read as follows, and remove paragraph (c)(3)(viii).

§ 8.6 Fees for special examinations and investigations.

* * * * *

(c) * * *

(3) * * *

(vii) *Fiduciary and related assets* are those assets reported on Schedule RC–T of FFIEC Forms 031 and 041, Line 10 (columns A and B) and Line 11 (column B), any successor form issued by the FFIEC, and any other fiduciary and related assets defined in the Notice of Comptroller of the Currency Fees.

§ 8.7 [Amended]

43. Amend § 8.7. paragraph (a), by removing "and" after "Federal branch"; adding ", and each Federal savings association" after "each Federal agency"; and adding ", each Federal savings association," after "each national bank".

PART 28—INTERNATIONAL BANKING ACTIVITIES

44a. The authority citation for part 28 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.,* 24 (Seventh), 93a, 161, 602, 1818, 3101 *et seq.,* and 3901 *et seq.*

§ 28.16 [Amended]

44b. Section 28.16 is amended by removing in paragraph (b) the term "$100,000" and adding in its place "the standard maximum deposit insurance amount as defined in 12 U.S.C. 1821(a)(1)(E)".

PART 34—REAL ESTATE LENDING AND APPRAISALS

45. The authority citation for part 34 is revised to read as follows:

Authority: 12 U.S.C. 1 *et seq.,* 25b, 29, 93a, 371, 1465, 1701j–3, 1828(o), 3331 *et seq.,* and 5412(b)(2)(B).

Subpart A—General

46. Amend § 34.4 by:

a. Revising paragraph (a) introductory text;

b. Revising paragraph (b) introductory text; and

c. Revising paragraph (b)(9).

The revisions read as follows:

§ 34.4 Applicability of state law.

(a) A national bank may make real estate loans under 12 U.S.C. 371 and § 34.3, without regard to state law limitations concerning:

* * * * *

(b) State laws on the following subjects are not inconsistent with the real estate lending powers of national banks and apply to national banks to the extent consistent with the decision of the Supreme Court in *Barnett Bank of Marion County, N.A.* v. *Nelson, Florida Insurance Commissioner, et al.,* 517 U.S. 25 (1996):

* * * * *

(9) Any other law that the OCC determines to be applicable to national banks in accordance with the decision of the Supreme Court in *Barnett Bank of Marion County, N.A.* v. *Nelson, Florida Insurance Commissioner, et al.,* 517 U.S. 25 (1996), or that is made applicable by Federal law.

47. Add § 34.6 to subpart A to read as follows:

§ 34.6 Applicability of state law to Federal savings associations and subsidiaries.

In accordance with section 1046 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 25b), state laws apply to Federal savings associations and their subsidiaries to the same extent and in the same manner that those laws apply to national banks and their subsidiaries.

Dated: May 19, 2011.

John Walsh,

Acting Comptroller of the Currency.

[FR Doc. 2011–12859 Filed 5–25–11; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0278; Directorate Identifier 2010–NE–10–AD]

RIN 2120–AA64

Airworthiness Directives; General Electric Company (GE) GE90–110B1 and GE90–115B Turbofan Engines

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, with certain part number (P/N) high-pressure compressor (HPC) stages 2–5 spools installed. This proposed AD would require eddy current inspection (ECI) or spot fluorescent penetrant inspection (FPI) of the stages 1–2 rotating seal teeth of the HPC stages 2–5 spool for cracks and would prohibit installation of HPC stator stage 1 interstage seals that are not pregrooved to prevent heavy rubs. This proposed AD was prompted by an aborted takeoff and two shop findings of cracks in the stages 1–2 rotating seal teeth. We are proposing this AD to detect cracks in the HPC stages 1–2 rotating seal teeth due to heavy rubs, which could result in failure of the stages 1–2 rotating seal of the HPC

stages 2–5 spool, uncontained engine failure, and damage to the airplane.

DATES: We must receive any comments on this proposed AD by July 11, 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 General Electric, GE-Aviation, Room 285, 1 Newman Way, Cincinnati, Ohio 45215; e-mail: *geae.aoc@ge.com;* phone: 513–552–3272; fax: 513–552–3329. You may review copies of the referenced service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

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: Jason Yang, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7747; fax: 781–238–7199; e-mail: *jason.yang@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send us 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–2011–0278; Directorate Identifier 2010–NE–10–AD" in the subject line 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 the proposed AD because of those comments.

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

Discussion

We received a report of an engine failure caused by the liberation of a portion of the HPC stages 1–2 rotating seal teeth, and subsequent reports of HPC stages 1–2 rotating seal teeth cracks, due to heavy rubs, found in engines in the shop. The heavy rubs are due to insufficient clearance between the rotating seal teeth and the abradable coating on the static seal. This proposed AD would require ECI or spot FPI of the stages 1–2 rotating seal teeth of the HPC stages 2–5 spool for cracks, and would prohibit installation of HPC stator stage 1 interstage seals that are not pregrooved in order to prevent heavy rubs. This condition, if not corrected, could result in failure of the stages 1–2 rotating seal of the HPC stages 2–5 spool, uncontained engine failure, and damage to the airplane.

Relevant Service Information

We reviewed GE Service Bulletin (SB) GE90–100 S/B 72–0320, Revision 02, dated October 1, 2010. That service information describes procedures for inspecting the stages 1–2 seal teeth for cracks.

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 on other products of the same type design.

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in the service information described previously.

Costs of Compliance

We estimate that this proposed AD would affect 19 GE90–110B1 and GE90–115B engines installed on airplanes of U.S. registry. We also estimate that it would take about 2 work-hours per engine to perform the proposed actions, and that the average labor rate is $85 per work-hour. Required parts would cost about $9,857 per engine. Based on these figures, we estimate the total cost of the proposed AD to U.S. operators to be $190,513.

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 that the 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):

General Electric Company: Docket No. FAA–2011–0278; Directorate Identifier 2010–NE–10–AD.

Comments Due Date

(a) We must receive comments by July 11, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to General Electric Company (GE) GE90–110B1 and GE90–115B turbofan engines with high-pressure compressor (HPC) stages 2–5 spools, part numbers (P/Ns) 351–103–106–0, 351–103–107–0, 351–103–108–0, 351–103–109–0, 351–103–141–0, 351–103–142–0, 351–103–143–0 and 351–103–144–0, installed.

Unsafe Condition

(d) This AD was prompted by an aborted takeoff and two shop findings of cracks in the stages 1–2 rotating seal teeth. We are issuing this AD to detect cracks in the HPC stages 1–2 rotating seal teeth due to heavy rubs, which could result in failure of the stages 1–2 rotating seal of the HPC stages 2–5 spool, uncontained engine failure, and damage to the airplane.

Compliance

(e) Comply with this AD when the HPC forward case half is removed from the engine after the effective date of this AD, unless the actions have already been done.

Inspection

(f) Perform an eddy current inspection or a fluorescent penetrant inspection of the stage 1–2 seal teeth using paragraphs 3.B. or 3.C. of GE Service Bulletin (SB) GE90–100 S/B 72–0320, Revision 02, dated October 1, 2010.

Disposition of Spools with Cracked Seal Teeth

(g) If you find cracks, remove the HPC stages 2–5 spool from service.

Previous Credit

(h) An inspection performed before the effective date of this AD using SB GE90–100 S/B 72–0320 Revision 01, dated May 11, 2010, or earlier revision, satisfies the inspection requirement of this AD.

Installation Prohibition

(i) After the effective date of this AD, do not install any HPC forward case unless it has an HPC stator stage 1 interstage seals, P/N 351–109–503–0.

Alternative Methods of Compliance (AMOCs)

(j) The Manager, Engine Certification Office, has the authority to approve AMOCs for this AD if requested using the procedures found in 14 CFR 39.19.

Related Information

(k) Contact Jason Yang, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7747; fax: 781–238–7199; e-mail: *jason.yang@faa.gov,* for more information about this AD.

(l) GE Service Bulletin GE90–100 S/B 72–0320, Revision 02, dated October 1, 2010, pertain to the subject of this AD. Contact General Electric, GE–Aviation, Room 285, 1 Newman Way, Cincinnati, Ohio 45215; e-mail: *geae.aoc@ge.com*; phone: 513–552–3272; fax: 513–552–3329, for a copy of this service information.

Issued in Burlington, Massachusetts, on May 20, 2011.

Peter A. White,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2011–13013 Filed 5–25–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2009–0558]

RIN 1625–AA08

Eleventh Coast Guard District Annual Marine Events

AGENCY: Coast Guard, DHS.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to clarify the verbiage in the list of marine events occurring annually within the Eleventh Coast Guard District. This supplemental notice of proposed rulemaking changes the proposed regulation by changing the dates of two of the proposed special local regulations and adds clarifying language to the proposed regulation within San Diego Captain of the Port zone. When these special local regulations are activated, and thus subject to enforcement, this rule would enable vessel movement restrictions in the regulated area.

DATES: Comments and related material must be received by the Coast Guard on or before June 27, 2011. Requests for public meetings must be received by the Coast Guard on or before June 15, 2011.

ADDRESSES: You may submit comments identified by docket number USCG–2009–0558 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail Lieutenant Lucas Mancini, Eleventh Coast Guard District Prevention Division, Waterways Management Branch, Coast Guard; telephone 510–437–3801, e-mail *Lucas.W.Mancini@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2009–0558), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the

body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* click on the "submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu select "Proposed Rule" and insert "USCG–2009–0558" in the "Keyword" box. Click "Search" then click on the balloon shape in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG–2009–0558" and click "Search." Click the "Open Docket Folder" in the "Actions" column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one on or before June 15, 2011 using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

For information on facilities or services for individuals with disabilities or to request special assistance at the public meeting, contact Lieutenant Junior Grade Lucas Mancini at the telephone number or e-mail address indicated under the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Background and Purpose

Marine events are annually held on a recurring basis on the navigable waters within the Eleventh Coast Guard District. These events include sailing regattas, powerboat races, rowboat races, parades, and swim events. Many of the annual events requiring special local regulations do not currently reflect changes in actual dates and other required information.

The effect of these proposed special local regulations will be to restrict general navigation in the vicinity of the events, from the start of each event until the conclusion of that event. These areas will be patrolled at the discretion of the Coast Guard. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area. These regulations are needed to keep spectators and vessels a safe distance away from the specified events to ensure the safety of participants, spectators, and transiting vessels.

Discussion of Proposed Rule

The Coast Guard published a Notice of Proposed Rulemaking (NPRM) on February 9, 2011 entitled Eleventh Coast Guard District Annual Marine Events in the **Federal Register** (76 FR 7123). We did not receive any comments on the proposed rule and did not receive any requests for a public meeting. A public meeting was not held. The NPRM published for this regulation proposed to revise 33 CFR 100.1101, 100.1102, and 100.1103 by standardizing the special local regulations language, update listed events, delete events that are no longer occurring, add new unlisted annual events to the regulation, and standardize the format for all tables in the sections, and to add a new 33 CFR 100.1104.

This rule proposes to revise the text of 33 CFR 100.1101(b)(3) and 100.1102(b)(3) to delete reference to the Patrol Commander (PATCOM) being located on the lead official patrol vessel. Often the PATCOM is located shoreside in a location that offers a better vantage point to monitor the event. The location of the PATCOM may also be dictated by radio communication requirements, or a need to be co-located with local law enforcement representatives.

Additionally, the Coast Guard proposes to delete the limiting descriptor "commercial" in 33 CFR 100.1101(b)(4) and 100.1102(b)(4), as applied to vessels being allowed to transit through the regulated areas when permitted by PATCOM. Often the PATCOM will allow all queued vessels to transit through a zone; for example during a long break in a race. Commercial vessels are normally given preference, but we do sometimes allow recreational vessels to move.

The Coast Guard proposes to change the dates for events listed as occurring in "late December" to "December." 33 CFR 100.1101, Table 1, item 5, the San Diego Parade of Lights, and item 6, the Mission Bay Parade of Lights are listed as occurring in late December. For administrative efficiency and to avoid potential problems, the Coast Guard proposed to delete "late" to allow for required flexibility in activating the special local regulations.

Finally, the proposed title of 33 CFR 100.1102 will be revised to clearly indicate the special local regulations are located in the San Diego Captain of the Port Zone.

Regulatory Analyses

We developed this proposed 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 proposed 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. We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary. This rule is not a significant regulatory action because the regulations exist for a limited period of time on a limited portion of the waterways. Further, individuals and vessels desiring to use the affected portion of the waterways may seek permission from the Patrol Commander to use the affected areas.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed 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 proposed rule would not have a significant economic impact on a substantial number of small entities.

We expect this proposed rule will affect the following entities, some of which may be small entities: The owners and operators of vessels intending to fish, transit, or anchor in the waters affected by these special local regulations. These special local regulations will not have a significant economic impact on a substantial number of small entities for the following reasons: Small vessel traffic will be able to pass safely around the area and vessels engaged in event activities, sightseeing and commercial fishing have ample space outside of the area governed by the special local regulations to engage in these activities. Small entities and the maritime public will be advised of implementation of these special local regulations via public notice to mariners or notice of implementation published in the **Federal Register**.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant Lucas Mancini, Eleventh Coast Guard District Prevention Division, Waterways Management Branch, Coast Guard; telephone 510–437–3801, e-mail *Lucas.W.Mancini@uscg.mil.* The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

This proposed rule would call 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 proposed 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 proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would 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 proposed 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 proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have Tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would 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 proposed 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 proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this proposed 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 made a preliminary determination, under paragraph 34(h) of the Instruction, that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under **ADDRESSES**. We seek any

comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 100

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

Words of Issuance and Proposed Regulatory Text

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

PART 100—MARINE EVENTS

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

2. Revise 33 CFR 100.1101 to read as follows:

§ 100.1101 Southern California Annual Marine Events for the San Diego Captain of the Port Zone.

(a) *General.* Special local regulations are established for the events listed in Table 1 of this section. Notice of implementation of these special local regulations will be made by publication in the **Federal Register** 30 days prior to the event for those events without specific dates. In all cases, further information on exact dates, times, and other details concerning the number and type of participants and an exact geographical description of the areas are published by the Eleventh Coast Guard District in the Local Notice to Mariners at least 20 days prior to each event. *Note:* Sponsors of events listed in Table 1 of this section must submit an application each year as required by 33 CFR Part 100 to the cognizant Coast Guard Sector Commander no less than 60 days before the start of the proposed event. Sponsors are informed that ample lead time is required to inform all Federal, state, local agencies, and/or other interested parties and to provide the sponsor the best support to ensure the safety of life and property.

(b) *Special local regulations.* All persons and vessels not registered with the sponsor as participants or as official patrol vessels are considered spectators. The "official patrol" consists of any Coast Guard or other vessels assigned or approved by the cognizant Coast Guard Sector Commander to patrol each event.

(1) No spectator shall anchor, block, loiter, nor impede the through transit of participants or official patrol vessels in the regulated areas during all applicable effective dates and times unless cleared to do so by or through an official patrol vessel.

(2) When hailed and/or signaled by an official patrol vessel, any spectator located within a regulated area during all applicable effective dates and times shall come to an immediate stop.

(3) The Patrol Commander (PATCOM) is empowered to forbid and control the movement of all vessels in the regulated area. The Patrol Commander shall be designated by the cognizant Coast Guard Sector Commander; will be a U.S. Coast Guard commissioned officer, warrant officer, or petty officer to act as the Sector Commander's official representative. As the Sector Commander's representative, the PATCOM may terminate the event any time it is deemed necessary for the protection of life and property. PATCOM may be reached on VHF–FM Channel 13 (156.65 MHz) or 16 (156.8 MHz) when required, by the call sign "PATCOM".

(4) The Patrol Commander may, upon request, allow the transit of vessels through regulated areas when it is safe to do so.

(5) The Coast Guard may be assisted by other Federal, state, or local agencies.

TABLE 1 TO § 100.1101

[All coordinates referenced use datum NAD 83]

1. San Diego Fall Classic	
Sponsor	San Diego Rowing Club.
Event Description	Competitive rowing race.
Date	Sunday in November
Location	Mission Bay, CA.
Regulated Area	The waters of Mission Bay to include South Pacific Passage, Fiesta Bay, and the waters around Vacation Isle.
2. California Half Ironman Triathlon	
Sponsor	North America Sport, Inc.
Event Description	Swimming Portion of Triathlon Race.
Date	Saturday in late March or early April.
Location	Oceanside, CA.
Regulated Area	The waters of Oceanside Harbor, CA, including the entrance channel.
3. San Diego Crew Classic	
Sponsor	San Diego Crew Classic.
Event Description	Competitive rowing race.
Date	First Saturday and Sunday in April.
Location	The Mission Bay Park area of San Diego, CA.
Regulated Area	Mission Bay, the portion known as Fiesta Bay.
4. Dutch Shoe Regatta	
Sponsor	San Diego Yacht Club.
Event Description	Sailboat Race.
Date	Friday in late July.
Location	San Diego, CA.

TABLE 1 TO § 100.1101—Continued

[All coordinates referenced use datum NAD 83]

Regulated Area	The waters of San Diego Bay, CA, from Shelter Island to Glorietta Bay.
5. San Diego Parade of Lights	
Sponsor	Greater Shelter Island Association.
Event Description	Boat Parade.
Date	December.
Location	San Diego Harbor.
Regulated Area	The northern portion of the San Diego Main Ship Channel from Seaport Village to the Shelter Island Basin.
6. Mission Bay Parade of Lights	
Sponsor	Mission Bay Yacht Club.
Event Description	Boat Parade.
Date	December.
Location	San Diego, CA.
Regulated Area	Mission Bay, the Main Entrance Channel, Sail Bay, and Fiesta Bay.

3. Revise § 100.1102 to read as follows:

§ 100.1102 Annual Marine Events on the Colorado River, between Davis Dam (Bullhead City, Arizona) and Headgate Dam (Parker, Arizona) within the San Diego Captain of the Port Zone.

(a) *General.* Special local regulations are established for the events listed in Table 1 of this section. Notice of implementation of these special local regulations will be made by publication in the **Federal Register** 30 days prior to the event for those events without specific dates or by Notice to Mariners 20 days prior to the event for those events listing a period for which a firm date is identifiable. In all cases, further information on exact dates, times, and other details concerning the number and type of participants and an exact geographical description of the areas are published by the Eleventh Coast Guard District in the Local Notice to Mariners at least 20 days prior to each event. To be placed on the mailing list for Local Notice to Mariners contact: Commander (dpw), Eleventh Coast Guard District, Coast Guard Island, Building 50–2, Alameda, CA 94501–5100. Note: Sponsors of events listed in Table 1 of this section must submit an application each year as required by 33 CFR part 100, subpart A, to the cognizant Coast Guard Sector Commander. Sponsors are informed that ample lead time is required to inform all Federal, state, local agencies, and/or other interested parties and to provide the sponsor the best support to ensure the safety of life and property. A Coast Guard-National Park Service agreement exists for both the Glen Canyon and Lake Mead National Recreational Areas; applicants shall contact the cognizant authority for approval of events in these areas.

(b) *Special local regulations.* All persons and vessels not registered with the sponsor as participants or as official patrol vessels are considered spectators. The "official patrol" consists of any Coast Guard, other Federal, state or local law enforcement, and any public or sponsor-provided vessels assigned or approved by the cognizant Coast Guard Sector Commander to patrol each event.

(1) No spectator shall anchor, block, loiter, nor impede the through transit of participants or official patrol vessels in the regulated areas during all applicable effective dates and times unless cleared to do so by or through an official patrol vessel.

(2) When hailed and/or signaled by an official patrol vessel, any spectator located within a regulated area during all applicable effective dates and times shall come to an immediate stop.

(3) The Patrol Commander (PATCOM) is empowered to forbid and control the movement of all vessels in the regulated area. The Patrol Commander shall be designated by the cognizant Coast Guard Sector Commander; will be a U.S. Coast Guard commissioned officer, warrant officer, or petty officer to act as the Sector Commander's official representative. As the Sector Commander's representative, the PATCOM may terminate the event any time it is deemed necessary for the protection of life and property. PATCOM may be reached on VHF–FM Channel 13 (156.65MHz) or 16 (156.8MHz) when required, by the call sign "PATCOM".

(4) The Patrol Commander may, upon request, allow the transit of vessels through regulated areas when it is safe to do so.

(5) The Coast Guard may be assisted by other Federal, state, or local agencies.

TABLE 1 TO § 100.1102

[All coordinates referenced use datum NAD 83]

1. Lake Havasu Winter Heat Water-Ski Race	
Sponsor	National Water-ski Racing Association.
Event Description	Water-ski races.
Date	Saturday and Sunday in February.
Location	Lake Havasu, AZ.
Regulated Area	That portion of the lower Colorado River on the Arizona side between Thompson Bay and Copper Canyon.

TABLE 1 TO § 100.1102—Continued

[All coordinates referenced use datum NAD 83]

2. Havasu Landing Regatta	
Sponsor	Southern Outboard Association.
Event Description	Boat Races on closed course.
Date	Saturday and Sunday in February.
Location	Havasu Lake, CA.
Regulated Area	That portion of the lower Colorado River on the California side at Havasu Landing Resort and Casino.
3. Parker International Water-Ski Race	
Sponsor	International Water-ski Race Association.
Event Description	Water-ski Show.
Date	Second Saturday and Sunday in March.
Location	Parker, AZ.
Regulated Area	The entire water area of the Colorado River beginning at Bluewater Marina in Parker, AZ, and extending approximately 10 miles to La Paz County Park.
4. Desert Storm	
Sponsor	Lake Racer LLC.
Event Description	Boat Poker Run and Exhibition Runs.
Date	April weekend (3 day event).
Location	Lake Havasu, AZ.
Regulated Area	The waters of the lower Colorado River encompassed by the following boundaries: Boundary one from 34°27′44″ N, 114°20′53″ W to 34°27′51″ N, 114°20′43″ W. Boundary two from 34°26′50″ N, 114°20′41″ W to 34°27′14″ N, 114°20′55″ W. Boundary three from 34°26′10″ N, 114°18′40″ W to 34°25′50″ N, 114°18′52″ W.
5. Lake Havasu Grand Prix	
Sponsor	POPRA.
Event Description	Boat Races on closed course.
Date	April weekend (2 day event).
Location	Lake Havasu, AZ.
Regulated Area	The waters of the lower Colorado River encompassed by the following boundaries: Boundary one from 34°27′44″ N, 114°20′53″ W to 34°27′51″ N, 114°20′43″ W. Boundary two from 34°26′50″ N, 114°20′41″ W to 34°27′14″ N, 114°20′55″ W. Boundary three from 34°26′10″ N, 114°18′40″ W to 34°25′50″ N, 114°18′52″ W.
6. Bluewater Resort and Casino Spring Classic	
Sponsor	Southern California Speedboat Club.
Event Description	Professional High-speed powerboat race, closed course.
Date	Saturday and Sunday in April.
Location	Parker, AZ.
Regulated Area	The Lake Moovalya area of the Colorado River in Parker, AZ.
7. IJSBA World Finals	
Sponsor	International Jet Sports Boating Association.
Event Description	Personal Watercraft Race.
Date	Second Saturday through third Sunday of October (10 Days).
Location	Lake Havasu City, AZ.
Regulated Area	The navigable waters of Lake Havasu, AZ in the area known as Crazy Horse Campgrounds.
8. Parker Enduro	
Sponsor	Parker Area Chamber of Commerce.
Event Description	Hydroplane, flatbottom, tunnel, and v-bottom powerboat race.
Date	Late October.
Location	Parker, AZ.

TABLE 1 TO § 100.1102—Continued

[All coordinates referenced use datum NAD 83]

Regulated Area	Between river miles 179 and 185 (between the Roadrunner Resort and Headgate Dam).
9. Bluewater Resort and Casino Thanksgiving Regatta	
Sponsor	Southern California Speedboat Club.
Event Description	Boat Races.
Date	Thursday, Friday, Saturday, and Sunday during Thanksgiving week.
Location	Parker, AZ.
Regulated Area	That portion of Lake Moovalya, Parker, AZ between the northern and southern boundaries of La Paz County Park.
10. Lake Havasu City Boat Parade of Lights	
Sponsor	London Bridge Yacht Club.
Event Description	Boat parade during which vessels pass by a pre-designated vessel and then transit through the London Bridge Channel.
Date	First Saturday and Sunday in December.
Location	Lake Havasu, AZ.
Regulated Area	The limits of this temporary safety zone are consists of the navigable waters of North Lake Havasu, London Bridge Channel and Thompson Bay.

4. Revise § 100.1103 to read as follows:

§ 100.1103 Northern California and Lake Tahoe Area Annual Marine Events.

(a) *General.* Special local regulations are established for the events listed in Table 1 of this section. Notice of implementation of these special local regulations will be made by publication in the **Federal Register** 30 days prior to the event for those events without specific dates or by Notice to Mariners 20 Days prior to the event for those events listing a period for which a firm date is identifiable. In all cases, further information on exact dates, times, and other details concerning the number and type of participants and an exact geographical description of the areas are published by the Eleventh Coast Guard District in the Local Notice to Mariners at least 20 days prior to each event. To be placed on the mailing list for Local Notice to Mariners contact: Commander (dpw), Eleventh Coast Guard District, Coast Guard Island, Building 50–2, Alameda, CA 94501–5100. Note: Sponsors of events listed in Table 1 of this section must submit an application each year as required by 33 CFR part 100, subpart A, to the cognizant Coast Guard Sector Commander. Sponsors are informed that ample lead time is required to inform all Federal, state, local agencies, and/or other interested parties and to provide the sponsor the best support to ensure the safety of life and property.

(b) *Special local regulations.* All persons and vessels not registered with the sponsor as participants or as official patrol vessels are considered spectators. The "official patrol" consists of any Coast Guard; other Federal, state, or local law enforcement; and any public or sponsor-provided vessels assigned or approved by the cognizant Coast Guard Sector Commander to patrol each event.

(1) No spectator shall anchor, block, loiter, nor impede the through transit of participants or official patrol vessels in the regulated areas during all applicable effective dates and times unless cleared to do so by or through an official patrol vessel.

(2) When hailed and/or signaled by an official patrol vessel, any spectator located within a regulated area during all applicable effective dates and times shall come to an immediate stop.

(3) The Patrol Commander (PATCOM) is empowered to forbid and control the movement of all vessels in the regulated area. The Patrol Commander shall be designated by the cognizant Coast Guard Sector Commander; will be a U.S. Coast Guard commissioned officer, warrant officer, or petty officer to act as the Sector Commander's official representative; and will be located aboard the lead official patrol vessel. As the Sector Commander's representative, the PATCOM may terminate the event any time it is deemed necessary for the protection of life and property. PATCOM may be reached on VHF–FM Channel 13 (156.65 MHz) or 16 (156.8 MHz) when required, by the call sign "PATCOM".

(4) The Patrol Commander may, upon request, allow the transit of commercial vessels through regulated areas when it is safe to do so.

(5) The Coast Guard may be assisted by other Federal, state, or local agencies.

TABLE 1 TO § 100.1103

[All coordinates referenced use datum NAD 83]

1. Redwood Heron Sprints Regatta	
Sponsor	Humboldt State University Athletic Department.
Event Description	Sport rowing shells.
Date	Third Sunday in April.
Location	Eureka Inner Reach Channel.

TABLE 1 TO § 100.1103—Continued

[All coordinates referenced use datum NAD 83]

Regulated Area	The navigable waters within an area bounded by a line starting 40°48′16″ N, 124°10′28″ W; thence to 40°48′21″ N, 124°10′28″ W; thence to 40°48′35″ N, 124°09′17″ W; thence to 40°48′30″ N, 124°09′17″ W; thence returning to the point of origin.
2. Stockton Asparagus Festival	
Sponsor	City of Stockton.
Event Description	Pier side Event.
Date	Last Friday, Saturday and Sunday in April.
Location	McLeod Lake, Stockton, CA.
Regulated Area	Starting at the Port of Stockton and extending east to McLeod Lake; beginning at latitude 37°57′06″ N and longitude 121°19′35″ W; then northerly to latitude 37°57′10″ N and longitude 121°19′36″ W; then north-northeasterly to latitude 37°57′24″ N and longitude 121°17′35″ W; then south-southwesterly to latitude 37°57′15″ N and longitude 121°17′41″ W; then south-southeasterly to latitude 37°57′14″ N and longitude 121°17′31″ W; and then back to the beginning point.
3. Blessing of the Fleet	
Sponsor	Corinthian Yacht Club.
Event Description	Boat parade during which vessels pass by a pre-designated platform or vessel.
Date	Last Sunday in April.
Location	San Francisco Waterfront to South Tower of Golden Gate Bridge.
Regulated Area	The area between a line drawn from Bluff Point on the southeastern side of Tiburon Peninsula to Point Campbell on the northern edge of Angel Island, and a line drawn from Peninsula Point to the southern edge of Tiburon Peninsula to Point Stuart on the western edge of Angel Island.
4. Opening Day on San Francisco Bay	
Sponsor	Pacific Inter-Club Yacht Association and Corinthian Yacht Club.
Event Description	Boat parade during which vessels pass by a pre-designated platform or vessel.
Date	Last Sunday in April.
Location	San Francisco, CA waterfront: Crissy Field to Pier 39.
Regulated Area	The area defined by a line drawn from Fort Point; thence easterly approximately 5,000 yards; thence easterly to the Blossom Rock Bell Buoy; thence westerly to the Northeast corner of Pier 39; thence returning along the shoreline to the point of origin. Special Requirements: All vessels entering the regulated area shall follow the parade route established by the sponsor and be capable of maintaining an approximate speed of 6 knots. Commercial Vessel Traffic Allowances: The parade will be interrupted, as necessary, to permit the passage of commercial vessel traffic. Commercial traffic must cross the parade route at a no-wake speed and perpendicular to the parade route.
5. Kinetic Sculpture Race	
Sponsor	Kinetic Sculpture Race Inc.
Event Description	Human Powered Craft Race.
Date	Saturday and Sunday of Memorial Day Weekend.
Location	Eureka Inner Reach Channel.
Regulated Area	The navigable waters within an area bounded by a line starting 40°48′16″ N, 124°10′28″ W; thence to 40°48′21″ N, 124°10′28″ W; thence to 40°48′35″ N, 124°09′17″ W; thence to 40°48′30″ N, 124°09′17″ W; thence returning to the point of origin.

TABLE 1 TO § 100.1103—Continued

[All coordinates referenced use datum NAD 83]

6. Sacramento Bridge-to-Bridge Water Festival	
Sponsor	Sacramento Visitors Bureau.
Event Description	Professional high-speed powerboat races.
Date	Second to last Friday, Saturday and Sunday in July.
Location	Sacramento, CA.
Regulated Area	The navigable waters within an area bounded by a line starting 38°35′49″ N, 121°30′30″ W; thence to 38°35′49″ N, 121°30′23″ W thence to 38°40′00″ N, 121°30′59″ W thence to 38°33′46″ N, 121°31′11″ W thence returning to the point of origin.
7. Humboldt Bay Paddle Fest	
Sponsor	Humboldt State University Alumni Association.
Event Description	Paddle boat race.
Date	Last weekend in September or first weekend in October.
Location	Eureka Inner Reach Channel.
Regulated Area	The navigable waters within an area bounded by a line starting 40°48′16″ N, 124°10′28″ W; thence to 40°48′21″ N, 124°10′28″ W; thence to 40°48′35″ N, 124°09′17″ W; thence to 40°48′30″ N, 124°09′17″ W; thence returning to the point of origin.
8. Delta Thunder Powerboat Race	
Sponsor	Pacific Offshore Power Racing Association.
Event Description	Professional high-speed powerboat race.
Date	Second Saturday, Sunday in September.
Location	Off Pittsburgh, CA in the waters around Winter Island and Brown Island.
Regulated Area	The water area of Suisun Bay commencing at Simmons Point on Chipps Island; thence southwesterly to Stake Point on the southern shore of Suisun Bay; thence easterly following the southern shoreline of Suisun Bay and New York Slough to New York Slough Buoy 13; thence north-northwesterly to the Northwestern corner of Fraser Shoal; thence northwesterly to the western tip of Chain Island; thence west-northwesterly to the northeast tip of Van Sickle Island; thence following the shoreline of Van Sickle Island and Chipps Island and returning to the point of origin.
9. Pittsburg Seafood Festival Air Show	
Sponsor	City of Pittsburg, CA.
Event Description	Pittsburg Seafood Festival Air Show.
Date	Second Saturday, Sunday in September.
Location	Off Pittsburgh, CA in the waters around Winter Island and Brown Island.
Regulated Area	The water area of Suisun Bay commencing at Simmons Point on Chipps Island; thence southwesterly to Stake Point on the southern shore of Suisun Bay; thence easterly following the southern shoreline of Suisun Bay and New York Slough to New York Slough Buoy 13; thence north-northwesterly to the Northwestern corner of Fraser Shoal; thence northwesterly to the western tip of Chain Island; thence west-northwesterly to the northeast tip of Van Sickle Island; thence following the shoreline of Van Sickle Island and Chipps Island and returning to the point of origin.

5. Add § 100.1104 to read as follows:

§ 100.1104 Southern California Annual Marine Events for the Los Angeles Long Beach Captain of the Port Zone.

(a) *General.* Special local regulations are established for the events listed in Table 1 of this section. Notice of implementation of these special local regulations will be made by publication in the **Federal Register** 30 days prior to the event for those events without

specific dates or by Notice to Mariners 20 days prior to the event for those events listing a period for which a firm date is identifiable. In all cases, further information on exact dates, times, and other details concerning the number and type of participants and an exact geographical description of the areas are published by the Eleventh Coast Guard District in the Local Notice to Mariners at least 20 days prior to each event. To be placed on the mailing list for Local Notice to Mariners contact: Commander (dpw), Eleventh Coast Guard District, Coast Guard Island, Building 50–2, Alameda, CA 94501–5100. *Note:* Sponsors of events listed in Table 1 of this section must submit an application each year as required by 33 CFR part 100, subpart A, to the cognizant Coast Guard Sector Commander. Sponsors are informed that ample lead time is required to inform all Federal, state, local agencies, and/or other interested parties and to provide the sponsor the best support to ensure the safety of life and property.

(b) *Special local regulations.* All persons and vessels not registered with the sponsor as participants or as official patrol vessels are considered spectators. The "official patrol" consists of any Coast Guard; other Federal, state, or local law enforcement; and any public or sponsor-provided vessels assigned or approved by the cognizant Coast Guard Sector Commander to patrol each event.

(1) No spectator shall anchor, block, loiter, nor impede the through transit of participants or official patrol vessels in the regulated areas during all applicable effective dates and times unless cleared to do so by or through an official patrol vessel.

(2) When hailed and/or signaled by an official patrol vessel, any spectator located within a regulated area during all applicable effective dates and times shall come to an immediate stop.

(3) The Patrol Commander (PATCOM) is empowered to forbid and control the movement of all vessels in the regulated area. The Patrol Commander shall be designated by the cognizant Coast Guard Sector Commander; will be a U.S. Coast Guard commissioned officer, warrant officer, or petty officer to act as the Sector Commander's official representative; and will be located aboard the lead official patrol vessel. As the Sector Commander's representative, the PATCOM may terminate the event any time it is deemed necessary for the protection of life and property. PATCOM may be reached on VHF–FM Channel 13 (156.65 MHz) or 16 (156.8 MHz) when required, by the call sign "PATCOM".

(4) The Patrol Commander may, upon request, allow the transit of commercial vessels through regulated areas when it is safe to do so.

(5) The Coast Guard may be assisted by other Federal, state, or local agencies.

TABLE 1 TO § 100.1104

[All coordinates referenced use datum NAD 83]

1. Newport to Ensenada Yacht Race	
Sponsor	Newport Ocean Sailing Association.
Event Description	Sailing vessel race; open ocean.
Date	Fourth Friday in April.
Location	Newport Beach, CA.
Regulated Area	Starting area only. All waters of the Pacific Ocean near Newport Beach, CA bounded by a line starting 33°35′18″ N, 117°53′18″ W thence to 33°34′54″ N, 117°53′18″ W thence to 33°34′54″ N, 117°54′30″ W thence to 33°35′18″ N, 117°54′30″ W thence returning to the point of origin.

Dated: May 10, 2011.

J.R. Castillo,

Rear Admiral, U.S. Coast Guard, Commander, Eleventh Coast Guard District.

[FR Doc. 2011–13037 Filed 5–25–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2009–0559]

RIN 1625–AA00

Safety Zones; Eleventh Coast Guard District Annual Fireworks Events

AGENCY: Coast Guard, DHS.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend the verbiage in listing of permanent safety zones during annual firework displays within the Eleventh Coast Guard District. This supplemental notice of proposed rulemaking changes the proposed regulation by adding clarifying language to the proposed regulation for San Diego Captain of the Port zone.

DATES: Comments and related material must be received by the Coast Guard on or before June 27, 2011. Requests for public meetings must be received by the Coast Guard on or before June 15, 2011.

ADDRESSES: You may submit comments identified by docket number USCG–2009–0559 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail Lieutenant Lucas Mancini, Eleventh Coast Guard District Prevention Division, Waterways Management Branch, Coast Guard; telephone 510–437–3801 e-mail *Lucas.W.Mancini@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2009–0559), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov*, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* click on the "submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu select "Proposed Rule" and insert "USCG–2009–0559" in the "Keyword" box. Click "Search" then click on the balloon shape in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG–2009–0559" and click "Search." Click the "Open Docket Folder" in the "Actions" column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

For information on facilities or services for individuals with disabilities or to request special assistance at the public meeting, contact Lieutenant Junior Grade Lucas Mancini at the telephone number or e-mail address indicated under the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Basis and Purpose

Firework displays are held annually on a recurring basis on the navigable waters within the Eleventh Coast Guard District. Many of the annual firework events requiring safety zones do not currently reflect changes in actual dates and other required information. These safety zones are necessary to provide for the safety of the crew, spectators, participants of the event, participating vessels, and other users and vessels of the waterway from the hazards associated with firework displays. This proposed rule will also provide the public current information on safety zone locations, size, and length of time the zones will be active.

The effect of these proposed safety zones will be to restrict general navigation in the vicinity of the events, from the start of each event until the conclusion of that event. These areas will be patrolled at the discretion of the Coast Guard. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area. These regulations are needed to keep spectators and vessels a safe distance away from the firework displays to ensure the safety of participants, spectators, and transiting vessels.

Discussion of Proposed Rule

The Coast Guard published a Notice of Proposed Rulemaking (NPRM) on February 9, 2011 entitled "Safety Zones; Eleventh Coast Guard District Annual Fireworks Events" in the **Federal Register** (76 FR 7131). We did not receive any comments on the proposed rule and did not receive any requests for a public meeting. A public meeting was not held. The NPRM published for this regulation proposed establishing safety zones for new annual fireworks events occurring in two Southern California Captain of the Port Zones (COTP) and on the Colorado River between Davis Dam (Bullhead City, Arizona) and Headgate Dam (Parker, Arizona), and also proposed to update existing safety zones to reflect current information on annual firework displays occurring within the Eleventh Coast Guard District.

The Coast Guard proposes to delete the limiting descriptor "commercial" as applied to vessels being allowed to transit through the regulated areas when permitted by PATCOM in 33 CFR 165.1123(b)(4); and 165.1124(b)(4). Often the PATCOM will allow all queued vessels to transit through a zone; for example during a long break in a race. The Coast Guard also proposes to revise the text of 100.1123(b)(3); and 100.1124(b)(3) to delete reference to the Patrol Commander (PATCOM) being located on the lead official patrol vessel. Often the PATCOM is located shoreside in a location that offers a better vantage point to monitor the event. The location of the PATCOM may also be dictated by radio communication requirements, or a need to be co-located with local law enforcement representatives.

Additionally, the Coast Guard proposes to change the dates for the Mission Bay 4th of July Fireworks and the Coronado, California Fireworks Display from a specific date to a range of dates ("the first week in July"). Due to the day of the week on which the 4th of July falls, these are not always the desired dates. The Coast Guard also proposes to change the date of the San Diego Parade of Lights Fireworks

Display from "late December" to "December" to allow for required scheduling flexibility when activating the safety zone. For administrative efficiency and to avoid potential problems, the Coast Guard proposed to amend Table 1 to § 165.1123 to reflect these changes. Finally, the proposed title of 33 CFR 165.1124 will be revised to clearly indicate the safety zones are located in the San Diego COTP.

Regulatory Analyses

We developed this proposed 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 proposed 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.

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary. This rule is not a significant regulatory action because the regulations exist for a limited period of time on a limited portion of the waterways. Furthermore, individuals and vessels desiring to use the affected portion of the waterways may seek permission from the Patrol Commander to use the affected areas.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed 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 proposed rule would not have a significant economic impact on a substantial number of small entities. We expect this proposed rule will affect the following entities, some of which may be small entities: Owners and operators of vessels intending to fish, sightsee, transit, or anchor in the waters affected by these safety zones. These regulations will not have a significant economic impact on a substantial number of small entities for several reasons: Small vessel traffic will be able to pass safely around the area and vessels engaged in event activities, sightseeing and commercial fishing have ample space outside of the area governed by the special local regulations to engage in these activities. Small entities and the maritime public will be advised of implementation of the safety zone via public notice to mariners or notice of implementation published in the **Federal Register**.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant Junior Grade Lucas Mancini, Eleventh Coast Guard District Prevention Division, Waterways Management Branch, Coast Guard; telephone 510–437–3801, e-mail *Lucas.W.Mancini@uscg.mil*. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

This proposed rule would call 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 proposed 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 proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would 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 proposed 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 proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have Tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would 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 proposed 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 proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this proposed 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 made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

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 proposes to amend 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 § 165.1123 to read as follows:

§ 165.1123 Southern California Annual Firework Events for the San Diego Captain of the Port Zone.

(a) *General.* Safety zones are established for the events listed in Table 1 of this section. Further information on exact dates, times, and other details concerning the exact geographical description of the areas are published by the Eleventh Coast Guard District in the Local Notice to Mariners at least 20 days prior to the event.

(b) *Regulations.* All persons and vessels not registered with the sponsor as participants or as official patrol vessels are considered spectators. The "official patrol" consists of any Coast Guard; other Federal, state, or local law enforcement; and any public or sponsor-provided vessels assigned or approved by the cognizant Coast Guard Sector Commander to patrol each event.

(1) No spectator shall anchor, block, loiter, nor impede the through transit of participants or official patrol vessels in the safety zone during all applicable effective dates and times unless cleared to do so by or through an official patrol vessel.

(2) When hailed and/or signaled by an official patrol vessel, any spectator located within a safety zone during all applicable effective dates and times shall come to an immediate stop.

(3) The Patrol Commander (PATCOM) is empowered to forbid and control the movement of all vessels in the safety zone. The Patrol Commander shall be designated by the cognizant Coast Guard Sector Commander; will be a U.S. Coast Guard commissioned officer, warrant officer, or petty officer to act as the Sector Commander's official representative. As the Sector Commander's representative, the PATCOM may terminate the event any time it is deemed necessary for the protection of life and property. PATCOM may be reached on VHF–FM Channel 13 (156.65 MHz) or 16 (156.8 MHz) when required, by the call sign "PATCOM".

(4) The Patrol Commander may, upon request, allow the transit of vessels through the safety zone when it is safe to do so.

(5) The Coast Guard may be assisted by other Federal, state, or local agencies.

TABLE 1 TO § 165.1123

[All coordinates referenced use datum NAD 83]

1. San Diego, CA POPS Fireworks Display	
Sponsor	Fireworks America.
Event Description	Fireworks Display.
Date	Friday/Saturday/Sunday Last weekend of June through first weekend of September.
Location	San Diego Bay South Embarcadero.
Regulated Area	800-foot radius safety zone around tug/barge combination.
2. Fourth of July Fireworks, Mission Bay	
Sponsor	Mission Bay 4th of July Fireworks.
Event Description	Fireworks Display.
Date	The first week in July.
Location	Mission Bay/Paradise Point and Sail Bay, CA.
Regulated Area	800-foot radius safety zone around tug/barge combination.
3. Coronado Fourth of July Fireworks	
Sponsor	Coronado, CA.
Event Description	Fireworks Display.
Date	The first week in July.

TABLE 1 TO § 165.1123—Continued

[All coordinates referenced use datum NAD 83]

Location	Glorietta Bay, CA.
Regulated Area	All navigable waters of San Diego Bay in San Diego, CA within a 1200 foot radius of the fireworks barge located at approximately 32°40′41″ N, 117°10′11″ W. Note: This will result in no through vessel traffic of Glorietta Bay for the duration of the fireworks display.

4. San Diego Parade of Lights Fireworks Display

Sponsor	Greater Shelter Island Association.
Event Description	Boat Parade.
Date	December.
Location	San Diego Harbor.
Regulated Area	The northern portion of the San Diego Main Ship Channel from Seaport Village to the Shelter Island Basin. (*Note:* See also 33 CFR 100.1101, Table 1, number 5 for related marine event).

3. Add § 165.1124 to read as follows:

§ 165.1124 Annual Firework Events on the Colorado River, between Davis Dam (Bullhead City, Arizona) and Headgate Dam (Parker, Arizona) within the San Diego Captain of Port Zone.

(a) *General.* Safety zones are established for the events listed in Table 1 of this section. Further information on exact dates, times, and other details concerning the exact geographical description of the areas are published by the Eleventh Coast Guard District in the Local Notice to Mariners at least 20 days prior to the event.

(b) *Regulations.* All persons and vessels not registered with the sponsor as participants or as official patrol vessels are considered spectators. The "official patrol" consists of any Coast Guard; other Federal, state, or local law enforcement; and any public or sponsor-provided vessels assigned or approved by the cognizant Coast Guard Sector Commander to patrol each event.

(1) No spectator shall anchor, block, loiter, nor impede the through transit of participants or official patrol vessels in the safety zone during all applicable effective dates and times unless cleared to do so by or through an official patrol vessel.

(2) When hailed and/or signaled by an official patrol vessel, any spectator located within a safety zone during all applicable effective dates and times shall come to an immediate stop.

(3) The Patrol Commander (PATCOM) is empowered to forbid and control the movement of all vessels in the safety zone. The Patrol Commander shall be designated by the cognizant Coast Guard Sector Commander; will be a U.S. Coast Guard commissioned officer, warrant officer, or petty officer to act as the Sector Commander's official representative. As the Sector Commander's representative, the PATCOM may terminate the event any time it is deemed necessary for the protection of life and property. PATCOM may be reached on VHF–FM Channel 13 (156.65 MHz) or 16 (156.8 MHz) when required, by the call sign "PATCOM".

(4) The Patrol Commander may, upon request, allow the transit of vessels through the safety zone when it is safe to do so.

(5) The Coast Guard may be assisted by other Federal, state, or local agencies.

TABLE 1 TO § 165.1124

[All coordinates referenced use datum NAD 83]

1. Avi Resort & Casino Memorial Day Fireworks

Sponsor	Avi Resort & Casino.
Event Description	Fireworks Display.
Date	Sunday before Memorial Day.
Location	Laughlin, NV.
Regulated Area	River closure from 8 pm–10 pm. The safety zone includes all navigable waters of the lower Colorado River at Laughlin, NV encompassed by the following coordinates: 35°01′05″ N, 114°38′20″ W; 35°01′05″ N, 114°38′15″ W; along the shoreline to 35°00′50″ N, 114°38′13″ W; 35°00′49″ N, 114°38′18″ W; along the shoreline to 35°01′05″ N, 114°38′20″ W.

2. Rockets Over the River

Sponsor	Laughlin Tourism Committee.
Event Description	Fireworks Display.
Date	First week in July.
Location	Laughlin, NV.

TABLE 1 TO § 165.1124—Continued

[All coordinates referenced use datum NAD 83]

Regulated Area	The temporary safety zone is specifically defined as all navigable waters of the lower Colorado River at Laughlin, NV encompassed by the following coordinates: 35°09′53″ N, 114°34′15″ W; 35°09′53″ N, 114°34′07″ W; along the shoreline to 35°09′25″ N, 114°34′09″ W; 35°09′06″ N, 114°34′17″ W; along the shoreline to 35°09′53″ N, 114°34′15″ W.
3. Avi Resort & Casino Fourth of July Fireworks	
Sponsor	Avi Resort & Casino.
Event Description	Fireworks Display.
Date	First week in July.
Location	Laughlin, NV.
Regulated Area	River closure from 8 pm–10 pm. The safety zone includes all navigable waters of the lower Colorado River at Laughlin, NV encompassed by the following coordinates: 35°01′ 05″ N, 114°38′20″ W; 35°01′05″ N, 114°38′14″ W; along the shoreline to 35°00′50″ N, 114°38′13″ W; 35°00′49″ N, 114°38′18″ W; along the shoreline to 35°01′05″ N, 114°38′20″ W.
4. Avi Resort & Casino Labor Day Fireworks	
Sponsor	Avi Resort & Casino.
Event Description	Fireworks Display.
Date	Sunday before Labor Day.
Location	Laughlin, NV.
Regulated Area	River closure from 8 pm–10 pm. The safety zone includes all navigable waters of the lower Colorado River at Laughlin, NV encompassed by the following coordinates: 35°01′05″ N, 114°38′20″ W; 35°01′05″ N, 114°38′15″ W; along the shoreline to 35°00′20″ N, 114°38′13″ W; 35°00′49″ N, 114°38′18″ W; along the shoreline to 35°01′05″ N, 114°38′20″ W.

4. Add § 165.1125 to read as follows:

§ 165.1125 Southern California Annual Firework Events for the Los Angeles Long Beach Captain of the Port zone.

(a) *General.* Safety zones are established for the events listed in Table 1 of this section. Further information on exact dates, times, and other details concerning the exact geographical description of the areas are published by the Eleventh Coast Guard District in the Local Notice to Mariners at least 20 days prior to the event.

(b) *Regulations.* All persons and vessels not registered with the sponsor as participants or as official patrol vessels are considered spectators. The "official patrol" consists of any Coast Guard; other Federal, state, or local law enforcement; and any public or sponsor-provided vessels assigned or approved by the cognizant Coast Guard Sector Commander to patrol each event.

(1) No spectator shall anchor, block, loiter, nor impede the through transit of participants or official patrol vessels in the safety zone during all applicable effective dates and times unless cleared to do so by or through an official patrol vessel.

(2) When hailed and/or signaled by an official patrol vessel, any spectator located within a safety zone during all applicable effective dates and times shall come to an immediate stop.

(3) The Patrol Commander (PATCOM) is empowered to forbid and control the movement of all vessels in the safety zone. The Patrol Commander shall be designated by the cognizant Coast Guard Sector Commander; will be a U.S. Coast Guard commissioned officer, warrant officer, or petty officer to act as the Sector Commander's official representative; and will be located aboard the lead official patrol vessel. As the Sector Commander's representative, the PATCOM may terminate the event any time it is deemed necessary for the protection of life and property. PATCOM may be reached on VHF–FM Channel 13 (156.65MHz) or 16 (156.8MHz) when required, by the call sign "PATCOM".

(4) The Patrol Commander may, upon request, allow the transit of commercial vessels through the safety zone when it is safe to do so.

(5) The Coast Guard may be assisted by other Federal, state, or local agencies.

TABLE 1 TO § 165.1125

[All coordinates referenced use datum NAD 83]

1. Cambria American Legion Post Fourth of July Fireworks	
Sponsor	Cambria American Legion Post.
Event Description	Fireworks Display.
Date	July 4th.
Location	Shamel Beach, Cambria, CA.

TABLE 1 TO § 165.1125—Continued

[All coordinates referenced use datum NAD 83]

Regulated Area	100-foot radius around the fireworks launch barge during the loading of pyrotechnics aboard the fireworks barge and during the transit of the fireworks barge from the loading location to the display location. Increases to a 1000-foot radius upon commencement of the fireworks display.

2. LA County Dept of Beach and Harbors 4th of July Fireworks

Sponsor	Los Angeles, CA County Dept of Beach and Harbors.
Event Description	Fireworks Display.
Date	July 4th.
Location	Main Ship Channel of Marina Del Rey, CA.
Regulated Area	100-foot radius around the fireworks launch barge during the loading of pyrotechnics aboard the fireworks barge and during the transit of the fireworks barge from the loading location to the display location. Increases to a 1000-foot radius upon commencement of the fireworks display.

3. Fourth of July Fireworks, City of Dana Point

Sponsor	City of Dana Point, CA.
Event Description	Fireworks Display.
Date	July 4th.
Location	Offshore Dana Point Harbor, CA.
Regulated Area	100-foot radius around the fireworks launch barge during the loading of pyrotechnics aboard the fireworks barge and during the transit of the fireworks barge from the loading location to the display location. Increases to a 1000-foot radius upon commencement of the fireworks display.

4. Fourth of July Fireworks, City of Long Beach

Sponsor	City of Long Beach, CA.
Event Description	Fireworks Display.
Date	July 4th.
Location	Long Beach Harbor, CA.
Regulated Area	100-foot radius around the fireworks launch barge during the loading of pyrotechnics aboard the fireworks barge and during the transit of the fireworks barge from the loading location to the display location. Increases to a 1000-foot radius upon commencement of the fireworks display.

5. Fourth of July Fireworks, Irvine Cove Community Association

Sponsor	Irvine Cove Community Association.
Event Description	Fireworks Display.
Date	July 4th.
Location	Offshore Laguna Beach, CA.
Regulated Area	100-foot radius around the fireworks launch barge during the loading of pyrotechnics aboard the fireworks barge and during the transit of the fireworks barge from the loading location to the display location. Increases to a 1000-foot radius upon commencement of the fireworks display.

6. Fourth of July Fireworks, Emerald Bay Community Association

Sponsor	Emerald Bay Community Association.
Event Description	Fireworks Display.
Date	July 4th.
Location	Offshore Laguna Beach, CA.
Regulated Area	100-foot radius around the fireworks launch barge during the loading of pyrotechnics aboard the fireworks barge and during the transit of the fireworks barge from the loading location to the display location. Increases to a 1000-foot radius upon commencement of the fireworks display.

TABLE 1 TO § 165.1125—Continued

[All coordinates referenced use datum NAD 83]

7. Fourth of July Fireworks, Morro Bay CoC	
Sponsor	Morro Bay Chamber of Commerce.
Event Description	Fireworks Display.
Date	July 4th.
Location	Offshore Morro Bay State Park.
Regulated Area	100-foot radius around the fireworks launch barge during the loading of pyrotechnics aboard the fireworks barge and during the transit of the fireworks barge from the loading location to the display location. Increases to a 1000-foot radius upon commencement of the fireworks display.
8. Fourth of July Fireworks, Catalina Island CoC	
Sponsor	Catalina Island Chamber of Commerce.
Event Description	Fireworks Display.
Date	July 4th.
Location	Avalon Bay, CA.
Regulated Area	100-foot radius around the fireworks launch barge during the loading of pyrotechnics aboard the fireworks barge and during the transit of the fireworks barge from the loading location to the display location. Increases to a 1000-foot radius upon commencement of the fireworks display.
9. Fourth of July Fireworks, City of Santa Barbara	
Sponsor	City of Santa Barbara, CA.
Event Description	Fireworks Display.
Date	July 4th.
Location	Harbor Entrance of Santa Barbara, CA.
Regulated Area	100-foot radius around the fireworks launch barge during the loading of pyrotechnics aboard the fireworks barge and during the transit of the fireworks barge from the loading location to the display location. Increases to a 1000-foot radius upon commencement of the fireworks display.
10. Fourth of July Fireworks, City of Faria	
Sponsor	City of Faria, CA.
Event Description	Fireworks Display.
Date	July 4th.
Location	Offshore Faria Beach, CA
Regulated Area	100-foot radius around the fireworks launch barge during the loading of pyrotechnics aboard the fireworks barge and during the transit of the fireworks barge from the loading location to the display location. Increases to a 1000-foot radius upon commencement of the fireworks display.
11. Fourth of July Fireworks, City of Redondo Beach	
Sponsor	City of Redondo Beach, CA.
Event Description	Fireworks Display.
Date	July 4th.
Location	Offshore Redondo Beach, CA.
Regulated Area	100-foot radius around the fireworks launch barge during the loading of pyrotechnics aboard the fireworks barge and during the transit of the fireworks barge from the loading location to the display location. Increases to a 1000-foot radius upon commencement of the fireworks display.
12. Fourth of July Fireworks, City of San Pedro	
Sponsor	City of San Pedro, CA.
Event Description	Fireworks Display.
Date	July 4th.
Location	Offshore Cabrillo Beach, CA.

TABLE 1 TO § 165.1125—Continued

[All coordinates referenced use datum NAD 83]

Regulated Area	100-foot radius around the fireworks launch barge during the loading of pyrotechnics aboard the fireworks barge and during the transit of the fireworks barge from the loading location to the display location. Increases to a 1000-foot radius upon commencement of the fireworks display.

13. Fourth of July Fireworks, City of Cayucos

Sponsor	City of Cayucos, CA.
Event Description	Fireworks Display.
Date	July 4th.
Location	Cayucos Pier.
Regulated Area	100-foot radius around the fireworks launch barge during the loading of pyrotechnics aboard the fireworks barge and during the transit of the fireworks barge from the loading location to the display location. Increases to a 1000-foot radius upon commencement of the fireworks display.

5. Revise § 165.1191 to read as follows:

§ 165.1191 Northern California and Lake Tahoe Area Annual Fireworks Events.

(a) *General.* Safety zones are established for the events listed in Table 1 of this section. Further information on exact dates, times, and other details concerning the exact geographical description of the areas are published by the Eleventh Coast Guard District in the Local Notice to Mariners at least 20 days prior to the event.

(b) *Regulations.* All persons and vessels not registered with the sponsor as participants or as official patrol vessels are considered spectators. The "official patrol" consists of any Coast Guard; other Federal, state, or local law enforcement; and any public or sponsor-provided vessels assigned or approved by the cognizant Coast Guard Sector Commander to patrol each event.

(1) No spectator shall anchor, block, loiter, nor impede the through transit of participants or official patrol vessels in the safety zone during all applicable effective dates and times unless cleared to do so by or through an official patrol vessel.

(2) When hailed and/or signaled by an official patrol vessel, any spectator located within a safety zone during all applicable effective dates and times shall come to an immediate stop.

(3) The Patrol Commander (PATCOM) is empowered to forbid and control the movement of all vessels in the safety zone. The Patrol Commander shall be designated by the cognizant Coast Guard Sector Commander; will be a U.S. Coast Guard commissioned officer, warrant officer, or petty officer to act as the Sector Commander's official representative; and will be located aboard the lead official patrol vessel. As the Sector Commander's representative, the PATCOM may terminate the event any time it is deemed necessary for the protection of life and property. PATCOM may be reached on VHF–FM Channel 13 (156.65 MHz) or 16 (156.8 MHz) when required, by the call sign "PATCOM".

(4) The Patrol Commander may, upon request, allow the transit of commercial vessels through the safety zone when it is safe to do so.

(5) The Coast Guard may be assisted by other Federal, state, or local agencies.

TABLE 1 TO § 165.1191

[All coordinates referenced use datum NAD 83]

1. San Francisco Giants Fireworks Display

Sponsor	San Francisco Giants Baseball Team.
Event Description	Fireworks display in conjunction with baseball season home games.
Date	All season home games at AT&T Park.
Location	1,000 feet off of Pier 48.
Regulated Area	100-foot radius around the fireworks launch barge during the loading of pyrotechnics aboard the fireworks barge and during the transit of the fireworks barge from the loading location to the display location. Increases to a 1000-foot radius upon commencement of the fireworks display.

2. KFOG KaBoom

Sponsor	KFOG Radio, San Francisco, CA.
Event Description	Fireworks Display.
Date	Second or Third Saturday in May.
Location	1,200 feet off Candlestick Point, San Francisco, CA.

TABLE 1 TO § 165.1191—Continued

[All coordinates referenced use datum NAD 83]

Regulated Area	100-foot radius around the fireworks launch barge during the loading of pyrotechnics aboard the fireworks barge and during the transit of the fireworks barge from the loading location to the display location. Increases to a 1000-foot radius upon commencement of the fireworks display.
3. Fourth of July Fireworks, City of Eureka	
Sponsor	City of Eureka, CA.
Event Description	Fireworks Display.
Date	July 4th.
Location	Humboldt Bay, CA.
Regulated Area	100-foot radius around the fireworks launch barge during the loading of pyrotechnics aboard the fireworks barge and during the transit of the fireworks barge from the loading location to the display location. Increases to a 1000-foot radius upon commencement of the fireworks display.
4. Fourth of July Fireworks, Crescent City	
Sponsor	Crescent City, CA.
Event Description	Fireworks Display.
Date	July 4th.
Location	Crescent City Harbor.
Regulated Area	100-foot radius around the fireworks launch barge during the loading of pyrotechnics aboard the fireworks barge and during the transit of the fireworks barge from the loading location to the display location. Increases to a 1000-foot radius upon commencement of the fireworks display.
5. Fourth of July Fireworks, City of Monterey	
Sponsor	City of Monterey, CA: Recreation & Community Services Department.
Event Description	Fireworks Display.
Date	July 4th.
Location	Monterey Bay, CA: East of Municipal Wharf #2.
Regulated Area	100-foot radius around the fireworks launch barge during the loading of pyrotechnics aboard the fireworks barge and during the transit of the fireworks barge from the loading location to the display location. Increases to a 1000-foot radius upon commencement of the fireworks display.
6. Light up the Sky Fireworks Display/Pillar Point Harbor Fireworks	
Sponsor	Various sponsors.
Event Description	Fireworks Display.
Date	July 4th.
Location	Half Moon Bay, CA.
Regulated Area	Pillar Point Harbor within the area of navigable waters within a 1,000-foot radius of the launch platform located on the harbor break wall.
7. Peninsula Fireworks Spectacular, Redwood City	
Sponsor	Peninsula Celebration Association.
Event Description	Fireworks Display.
Date	July 4th.
Location	Redwood City, CA.
Regulated Area	100-foot radius around the fireworks launch barge during the loading of pyrotechnics aboard the fireworks barge and during the transit of the fireworks barge from the loading location to the display location. Increases to a 1000-foot radius upon commencement of the fireworks display.

TABLE 1 TO § 165.1191—Continued

[All coordinates referenced use datum NAD 83]

8. San Francisco Independence Day Fireworks Display	
Sponsor	The City of San Francisco, CA and the Fisherman's Wharf Association.
Event Description	Fireworks Display.
Date	July 4th.
Location 1	A barge located approximately 1000 feet off San Francisco Pier 39 at approximately 37°48′49″ N, 122°24′46″ W.
Location 2	The end of the San Francisco Municipal Pier at Aquatic Park at approximately 37°48′38″ N, 122°24′30″ W.
Regulated Area 1	100-foot radius around the fireworks launch barge during the loading of pyrotechnics aboard the fireworks barge and during the transit of the fireworks barge from the loading location to the display location. Increases to a 1000-foot radius upon commencement of the fireworks display.
Regulated Area 2	The area of navigable waters within a 1,000-foot radius of the launch platform located on the Municipal Pier.
9. Jack London Square Fourth of July Fireworks	
Sponsor	Jack London Square Business Association.
Event Description	Fireworks Display.
Date	July 4th.
Location	Oakland Inner Harbor, CA.
Regulated Area	100-foot radius around the fireworks launch barge during the loading of pyrotechnics aboard the fireworks barge and during the transit of the fireworks barge from the loading location to the display location. Increases to a 1000-foot radius upon commencement of the fireworks display.
10. Fourth of July Fireworks, Berkley Marina	
Sponsor	Berkeley Marina.
Event Description	Fireworks Display.
Date	July 4th.
Location	Berkeley Pier, CA
Regulated Area	The area of navigable waters within a 1,000-foot radius of the launch platform located on the Berkeley Pier.
11. Fourth of July Fireworks, City of Richmond	
Sponsor	City of Richmond.
Event Description	Fireworks Display.
Date	Week of July 4th.
Location	Richmond Harbor, CA.
Regulated Area	100-foot radius around the fireworks launch barge during the loading of pyrotechnics aboard the fireworks barge and during the transit of the fireworks barge from the loading location to the display location. Increases to a 1000-foot radius upon commencement of the fireworks display.
12. Fourth of July Fireworks, City of Sausalito	
Sponsor	City of Sausalito.
Event Description	Fireworks Display.
Date	July 4th.
Location	1,000 feet off-shore from Sausalito, CA waterfront, north of Spinnaker Restaurant.
Regulated Area	100-foot radius around the fireworks launch barge during the loading of pyrotechnics aboard the fireworks barge and during the transit of the fireworks barge from the loading location to the display location. Increases to a 1000-foot radius upon commencement of the fireworks display.
13. Fourth of July Fireworks, City of Martinez	
Sponsor	City of Martinez.
Event Description	Fireworks Display.

TABLE 1 TO § 165.1191—Continued

[All coordinates referenced use datum NAD 83]

Date	July 4th.
Location	Carquinez Strait, CA
Regulated Area	The area of navigable waters within a 1,000-foot radius of the launch platform located on a Martinez Marina Pier.
14. Fourth of July Fireworks, City of Antioch	
Sponsor	City of Antioch.
Event Description	Fireworks Display.
Date	July 4th.
Location	San Joaquin River, CA.
Regulated Area	100-foot radius around the fireworks launch barge during the loading of pyrotechnics aboard the fireworks barge and during the transit of the fireworks barge from the loading location to the display location. Increases to a 1000-foot radius upon commencement of the moving fireworks display.
15. Fourth of July Fireworks, City of Pittsburg	
Sponsor	City of Pittsburg.
Event Description	Fireworks Display.
Date	July 4th.
Location	Suisun Bay, CA.
Regulated Area	The area of navigable waters within a 1,000-foot radius of the launch platform located on a Pittsburg Marina Pier.
16. Independence Day Celebration, City of Stockton	
Sponsor	City of Stockton.
Event Description	Fireworks Display.
Date	July 4th.
Location	Stockton, CA Deep Water Ship Channel.
Regulated Area	The area of navigable waters from the Port of Stockton to Mcleod Lake; beginning at 37°57′06 ″ N, 121°19′35″ W, then north to 37°57′10″ N, 121°19′36″ W, then north-east 37°57′24″ N, 121°17′35″ W, south-west 37°57′15″ N, 121°17′41″ W, then south-east 37°57′14″ N, 121°17′31″ W, and then back to the beginning point.
17. Hilton Fourth of July Fireworks	
Sponsor	Hilton Corporation.
Event Description	Fireworks Display.
Date	July 4th.
Location	San Joaquin River, near Venice Island, CA.
Regulated Area	100-foot radius around the fireworks launch barge during the loading of pyrotechnics aboard the fireworks barge and during the transit of the fireworks barge from the loading location to the display location. Increases to a 1000-foot radius upon commencement of the fireworks display.
18. Fourth of July Fireworks Display, Tahoe City, CA	
Sponsor	Tahoe City Rotary.
Event Description	Fireworks Display.
Date	July 4th.
Location	Off-shore from Common Beach, Tahoe City, CA.
Regulated Area	100-foot radius around the fireworks launch barge during the loading of pyrotechnics aboard the fireworks barge and during the transit of the fireworks barge from the loading location to the display location. Increases to a 1000-foot radius upon commencement of the fireworks display.
19. Fourth of July Fireworks Display, Glenbrook NV	
Sponsor	Glenbrook Community Homeowners Association.
Event Description	Fireworks Display.
Date	July 4th.

TABLE 1 TO § 165.1191—Continued

[All coordinates referenced use datum NAD 83]

Location	Off-shore Glenbrook Beach, NV.
Regulated Area	100-foot radius around the fireworks launch barge during the loading of pyrotechnics aboard the fireworks barge and during the transit of the fireworks barge from the loading location to the display location. Increases to a 1000-foot radius upon commencement of the fireworks display.
20. Independence Day Fireworks, Kings Beach, CA	
Sponsor	North Tahoe Business Association.
Event Description	Fireworks Displays.
Date	Week of July 4th.
Location	Off-shore from Kings Beach, CA
Regulated Area	100-foot radius around the fireworks launch barge during the loading of pyrotechnics aboard the fireworks barge and during the transit of the fireworks barge from the loading location to the display location. Increases to a 1000-foot radius upon commencement of the fireworks display.
21. "Lights on the Lake" Fourth of July Fireworks, South Lake Tahoe, CA	
Sponsor	Various Sponsors.
Event Description	Fireworks Display.
Date	Week of July 4th.
Location	Off South Lake Tahoe, CA near the NV Border.
Regulated Area	100-foot radius around the fireworks launch barge during the loading of pyrotechnics aboard the fireworks barge and during the transit of the fireworks barge from the loading location to the display location. Increases to a 1000-foot radius upon commencement of the fireworks display.
22. Red, White, and Tahoe Blue Fireworks, Incline Village, NV	
Sponsor	Various Sponsors.
Event Description	Fireworks Display.
Date	Week of July 4th.
Location	500–1,000 feet off Incline Village, NV in Crystal Bay.
Regulated Area	100-foot radius around the fireworks launch barge during the loading of pyrotechnics aboard the fireworks barge and during the transit of the fireworks barge from the loading location to the display location. Increases to a 1000-foot radius upon commencement of the fireworks display.
23. Independence Day Fireworks Display, Homewood, CA	
Sponsor	Westshore Café.
Event Description	Fireworks Display.
Date	Week of July 4th.
Location	Homewood, CA.
Regulated Area	100-foot radius around the fireworks launch barge during the loading of pyrotechnics aboard the fireworks barge and during the transit of the fireworks barge from the loading location to the display location. Increases to a 1000-foot radius upon commencement of the fireworks display.
24. "Labor Day Fireworks Display" South Lake Tahoe, CA	
Sponsor	Various Sponsors.
Event Description	Fireworks Display.
Date	Labor Day.
Location	Off South Lake Tahoe, California near the Nevada Border.

TABLE 1 TO § 165.1191—Continued

[All coordinates referenced use datum NAD 83]

Regulated Area	100-foot radius around the fireworks launch barge during the loading of pyrotechnics aboard the fireworks barge and during the transit of the fireworks barge from the loading location to the display location. Increases to a 1000-foot radius upon commencement of the fireworks display.
25. Fleet Week Fireworks	
Sponsor	Various Sponsors.
Event Description	Fireworks Display.
Date	Second Friday and Saturday in October.
Location	1,000 feet off Pier 3, San Francisco, CA.
Regulated Area	100-foot radius around the fireworks launch barge during the loading of pyrotechnics aboard the fireworks barge and during the transit of the fireworks barge from the loading location to the display location. Increases to a 1000-foot radius upon commencement of the fireworks display.
26. Monte Foundation Fireworks	
Sponsor	Monte Foundation Fireworks.
Event Description	Fireworks Display.
Date	Second Saturday in October.
Location	Sea Cliff State Beach Pier in Aptos, CA.
Regulated Area	1000-foot safety zone around the navigable waters of the Sea Cliff State Beach Pier.
27. Rio Vista Bass Derby Fireworks	
Sponsor	Rio Vista Chamber of Commerce.
Event Description	Fireworks Display.
Date	Second Saturday in October.
Location	500 feet off Rio Vista, CA waterfront.
Regulated Area	100-foot radius around the fireworks launch barge during the loading of pyrotechnics aboard the fireworks barge and during the transit of the fireworks barge from the loading location to the display location. Increases to a 1000-foot radius upon commencement of the fireworks display.
28. San Francisco New Years Eve Fireworks Display	
Sponsor	City of San Francisco.
Event Description	Fireworks Display.
Date	New Years Eve, December 31st.
Location	1,000 feet off Pier 2, San Francisco, CA.
Regulated Area	100-foot radius around the fireworks launch barge during the loading of pyrotechnics aboard the fireworks barge and during the transit of the fireworks barge from the loading location to the display location. Increases to a 1000-foot radius upon commencement of the fireworks display.
29. Sacramento New Years Eve Fireworks Display	
Sponsor	Sacramento Convention and Visitors' Bureau.
Event Description	Fireworks Display.
Date	New Years Eve, December 31st.
Location	Near Tower Bridge, Sacramento River.
Regulated Area	The navigable waters of the Sacramento River surrounding the shore-based launch locations between two lines drawn 1,000 feet south of Tower Bridge, and 1,000 feet north of the I Street Bridge.

Dated: May 10, 2011.

J.R. Castillo,

Rear Admiral, U.S. Coast Guard, Commander, Eleventh Coast Guard District.

[FR Doc. 2011–13036 Filed 5–25–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AN86

Payment or Reimbursement for Emergency Services for Nonservice-Connected Conditions in Non-VA Facilities

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Department of Veterans Affairs (VA) "Payment or Reimbursement for Emergency Services for Nonservice-Connected Conditions in Non-VA Facilities" regulations to conform with changes made by certain sections of the Expansion of Veteran Eligibility for Reimbursement Act. Some of the revisions in this proposed rule are purely technical, matching the language of our regulations to the language of the revised statute, while others set out VA's policies regarding the implementation of statutory requirements. The proposed rule would expand the qualifications for payment or reimbursement to veterans who receive emergency services in non-VA facilities, and would establish accompanying standards for the method and amount of payment or reimbursement.

DATES: Comments on the proposed rule must be received by VA on or before July 25, 2011.

ADDRESSES: Written comments may be submitted through *http://www.Regulations.gov;* by mail or hand-delivery to the Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. Comments should indicate that they are submitted in response to "RIN 2900–AN86—Payment or Reimbursement of Emergency Services for Nonservice-Connected Conditions in Non-VA Facilities." Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment. This is not a toll-free number. In addition, during the comment period, comments may be viewed online at *http://www.Regulations.gov* through the Federal Docket Management Systems (FDMS).

FOR FURTHER INFORMATION CONTACT: Holley Niethammer, Fee Policy Chief, National Fee Program Office, Veterans Health Administration, Department of Veterans Affairs, 3773 Cherry Creek Dr. N., East Tower, Ste 495, Denver, CO 80209, (303) 370–5062. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On February 1, 2010, Congress enacted the Expansion of Veteran Eligibility for Reimbursement Act (2010 Act), amending 38 U.S.C. 1725. Current VA regulations implement section 1725 in 38 CFR 17.1000 through 17.1008 under the undesignated heading "Payment or Reimbursement for Emergency Services for Nonservice-Connected Conditions in Non-VA Facilities." This proposed rule would revise §§ 17.1001, 17.1002, 17.1004, and 17.1005. These revisions would eliminate certain exclusions from emergency care payment or reimbursement, and define the payment limitations for those qualifying for payment or reimbursement under the law as amended by the 2010 Act.

The 2010 Act amended 38 U.S.C. 1725 by removing a provision that included automobile insurance carriers in the definition of "health-plan contract." Under 38 U.S.C. 1725, veterans who are covered by a health-plan contract are ineligible for VA payment or reimbursement. Thus, we propose to remove current 38 CFR 17.1001(a)(5), which includes automobile insurance in the definition of "health-plan contract." These proposed amendments would implement VA's authority to pay or reimburse claimants for providing emergency services to a veteran if the veteran received, or is legally eligible to receive, partial payment towards emergency services from an automobile insurer.

The 2010 Act also amended 38 U.S.C. 1725 by removing a provision that precluded certain claimants from payment or reimbursement by VA for emergency care at non-VA facilities. Parties who qualified as claimants under former section 1725 (as implemented by VA in current 38 CFR 17.1004(a)) included veterans, the provider of the emergency treatment, or the person or organization that paid for such treatment on behalf of the veteran. Under the 2010 Act, claimants who are entitled to partial payment from a third party for providing non-VA emergency services to a veteran are no longer barred from also receiving VA payment or reimbursement for such care. Prior to the 2010 Act, section 1725 required that VA deny any claim in which a veteran has "other contractual or legal recourse against a third party that would, in whole or in part, extinguish such liability to the provider." The 2010 Act removed "or in part" from this exclusion. In order to remove this partial payment exclusion from VA regulations, we propose to remove the clause, "or in part", from § 17.1002(h), to parallel the language in 38 U.S.C. 1725.

In addition, the 2010 Act authorized, but did not require, VA to provide repayment under section 1725 "for emergency treatment furnished to a veteran before the date of the enactment of th[e 2010] Act, if the Secretary determines that, under the circumstances applicable with respect to the veteran, it is appropriate to do so." We interpret this provision to allow VA, through regulation, to provide retroactive reimbursement, and we propose to implement this authority in § 17.1004(f).

Under current § 17.1004(d), claims for reimbursement must be filed within 90 days after the latest of four dates: (1) July 19, 2001 (the effective date of § 17.1004(d) when VA first promulgated the regulation); (2) the date that the veteran was discharged from the facility that provided the emergency treatment; (3) the date of the veteran's death (under specified circumstances); or (4) the date that the veteran finally exhausted, without success, action to obtain reimbursement from a third party. A retroactive claim under proposed § 17.1004(f) would be an exception to this rule. Moreover, the first requirement in current § 17.1004(d)(1)—that claims must be filed within the 90-day period after July 19, 2001—is an outdated provision because all claims now received by VHA for reimbursement must, as a practical matter, be filed many years after July 19, 2001. Therefore, we propose to remove § 17.1004(d)(1).

Because proposed § 17.1004(f) would authorize reimbursement for a claim that does not meet the generally applicable criteria in § 17.1004(d), we would make the provision apply "[n]otwithstanding paragraph (d)". We would also require that the emergency treatment was received on or after July 19, 2001. We use this date from current § 17.1004(d)(1) because there is no indication in the language or history of the 2010 Act that Congress intended a

greater benefit for claimants applying under the retroactive authorization in the 2010 Act than what VA prescribed for claimants under current § 17.1004(d). In addition, the retroactivity authorized by paragraph (f) would apply only to treatment received more than 90 days before the effective date of the final rule in this rulemaking. This limitation is necessary because treatment received after that date would be covered by § 17.1004(d), i.e., a claim for such care is not a retroactive claim.

We also propose to limit the applicability of this retroactive authority to claims filed within 1 year after the effective date of the final rule. Because retroactive claims may be for care provided nearly 10 years ago, we believe that a 1-year time limit allows claimants adequate time to learn about the new rule and complete their claims, while providing VA a reasonable timeframe within which it must be prepared to handle these more complex retroactive claims.

Section 1725, as amended by the 2010 Act, sets forth specific payment limitations for those claimants who now qualify for payment or reimbursement based on the removal of the partial payment restriction discussed above. We would establish these limitations in paragraphs (c) and (d) of § 17.1005.

First, in proposed § 17.1005(c)(1), VA would be a secondary payer in cases where a third party is financially responsible for part of the veteran's emergency treatment expenses. This reflects 38 U.S.C. 1725(c)(4)(B), which directs VA to be the secondary payer in such cases. Under proposed § 17.1005(c)(2), in cases where a veteran receives, or is legally entitled to receive, only partial reimbursement from a third party, VA would "pay the difference between the amount VA would have paid under this section for the cost of the emergency treatment and the amount paid (or payable) by the third party." This payment limitation would be based on 38 U.S.C. 1725(c)(4)(A), which specifically requires VA to pay this amount.

VA would pay the provider the difference between the amount paid on behalf of the veteran by the third party and the amount VA would have paid in the absence of legal liability for the payment of the veteran's health care cost by a third party. The total of these combined payments would also be considered payment in full and extinguish any liability that the veteran may have to the provider. This payment limitation is required by 38 U.S.C. 1725(c)(4)(C), which directs VA to pay in full and extinguish the veteran's liability. The veteran would no longer be liable because the amount of the third party's payment or legal liability, plus VA's payment, would equal the total payment VA would have made in the absence of third party liability for the veteran's emergency care costs. Therefore, in proposed § 17.1005(c)(3), VA would state that "[t]he provider will consider the combined payment under paragraph (c)(2) of this section as payment in full and extinguish the veteran's liability to the provider."

Under proposed § 17.1005(d), VA would not reimburse claimants for any "deductible, copayment or similar payment" that veterans owe to third parties. This is based on 38 U.S.C. 1725(c)(4)(D).

Finally, we note that it is not necessary to propose changes based on the statutory language precluding reimbursement for amounts "for which the veteran is responsible under a health-plan contract," because current 38 CFR 17.1002(g) already prevents any reimbursement or payment where the veteran is under a health-plan contract.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in expenditure by State, local, or Tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any given year. This proposed rule would have no such effect on State, local, or Tribal governments, or on the private sector.

Paperwork Reduction Act

The Office of Management and Budget (OMB) assigns a control number for each collection of information it approves. Except for emergency approvals under 44 U.S.C. 3507(j), VA may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Current § 17.1004 contains a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521). OMB previously approved the collection of information and assigned Control Number 2900–0620. Because this proposed rule does not alter the information collection approved by OMB under the existing control number, we do not propose to seek new approval.

We propose to insert a citation to the OMB control number immediately after the authority citation for § 17.1004 to clarify that that section contains an approved collection of information.

Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Executive Order classifies a regulatory action as a "significant regulatory action," requiring review by the Office of Management and Budget (OMB) unless OMB waives such review, if it is a regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The economic, interagency, budgetary, legal, and policy implications of this proposed rule have been examined and it has been determined not to be a significant regulatory action under Executive Order 12866.

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This proposed rule would not cause a significant economic impact on health care providers, suppliers, or entities since only a small portion of the business of such entities concerns VA beneficiaries. Further, under this proposed rule, affected small entities would be reimbursed for the expenses they incur for the emergency treatment of certain veterans. Therefore, pursuant to 5 U.S.C. 605(b), this proposed rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program number and title for this proposed rule are as follows: 64.005, Grants to States for Construction of State Home Facilities; 64.007, Blind Rehabilitation Centers; 64.008, Veterans Domiciliary Care; 64.009, Veterans Medical Care Benefits; 64.010, Veterans Nursing Home Care; 64.014, Veterans State Domiciliary Care; 64.015, Veterans State Nursing Home Care; 64.018, Sharing Specialized Medical Resources; 64.019, Veterans Rehabilitation Alcohol and Drug Dependence; 64.022, Veterans Home Based Primary Care; and 64.024, VA Homeless Providers Grant and Per Diem Program.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the **Federal Register** for publication electronically as an official document of the Department of Veterans Affairs. John R. Gingrich, Chief of Staff, Department of Veterans Affairs, approved this document on May 19, 2011, for publication.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs—health, Government programs—veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing home care, Veterans.

Dated: May 20, 2011.

William F. Russo,

Deputy Director, Office of Regulations Policy & Management, Department of Veterans Affairs.

For the reasons stated in the preamble, the Department of Veterans Affairs proposes to revise 38 CFR part 17 as follows:

PART 17—MEDICAL

1. The authority citation for part 17 continues to read as follows:

Authority: 38 U.S.C. 501, and as noted in specific sections.

§ 17.1001 [Amended]

2. Amend § 17.1001 by removing paragraph (a)(5).

§ 17.1002 [Amended]

3. Amend § 17.1002 by removing the words "or in part" in paragraph (h).

§ 17.1004 [Amended]

4. Amend § 17.1004 as follows:

a. Remove paragraph (d)(1).

b. Redesignate paragraphs (d)(2), (d)(3) and (d)(4) as new paragraphs (d)(1), (d)(2) and (d)(3), respectively.

c. Add paragraph (f) immediately following paragraph (e).

d. Add an information collection approval parenthetical at the end of the section.

The additions read as follows:

§ 17.1004. Filing claims.

* * * * *

(f) Notwithstanding paragraph (d) of this section, VA will provide retroactive payment or reimbursement for emergency treatment received by the veteran on or after July 19, 2001, but more than 90 days before [*the effective date of the final rule*], if the claimant files a claim for reimbursement no later than 1 year after [*the effective date of the final rule*].

* * * * *

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0620.)

5. Amend § 17.1005 by adding paragraphs (c) and (d), to read as follows:

§ 17.1005. Payment limitations.

* * * * *

(c) If an eligible veteran under § 17.1002 has contractual or legal recourse against a third party that would only partially extinguish the veteran's liability to the provider of emergency treatment then:

(1) VA will be the secondary payer;

(2) Subject to the limitations of this section, VA will pay the difference between the amount VA would have paid under this section for the cost of the emergency treatment and the amount paid (or payable) by the third party; and

(3) The provider will consider the combined payment under paragraph (c)(2) of this section as payment in full and extinguish the veteran's liability to the provider.

(d) VA will not reimburse a claimant under this section for any deductible, copayment or similar payment that the veteran owes the third party.

* * * * *

[FR Doc. 2011–13015 Filed 5–25–11; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2011–0195; FRL–9311–8]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Revisions to Clean Air Interstate Rule Emissions Trading Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia. The revision, which amends the Virginia Clean Air Interstate Rule (CAIR) trading program, is comprised of technical corrections and revisions to the definition of a cogeneration unit to ensure the Commonwealth's CAIR trading program is consistent with Federal CAIR requirements. This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before June 27, 2011.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2011–0195 by one of the following methods:

A. *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *E-mail: fernandez.cristina@epa.gov.*

C. *Mail:* EPA–R03–OAR–2011–0195, Cristina Fernandez, Associate Director, Office of Air Quality Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2011–0195. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The

http://www.regulations.gov Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Marilyn Powers, (215) 814–2308, or by e-mail at *powers.marilyn@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, whenever "we," "us," or "our" is used, we mean EPA. On September 27, 2010, the Commonwealth of Virginia Department of Environmental Quality (VADEQ) submitted a revision to its SIP, including technical corrections and revisions to the definition of a cogeneration unit to ensure the Commonwealth's CAIR trading program is consistent with Federal CAIR requirements.

I. Background

EPA approved Virginia's CAIR trading program on December 28, 2007 (72 FR 73602). In the notice of proposed rulemaking (NPR) for Virginia's CAIR trading program (72 FR 54385, September 25, 2007), EPA noted that it believed that Virginia clearly intended to replace the CAIR Federal Implementation Plan (FIP) with a State plan based on the CAIR model rule that would allow subject sources, non-EGUs from its Nitrogen Oxides (NO_X) SIP Call budget trading program, and opt-in units meeting the CAIR opt-in criteria to participate in the EPA-administered regional CAIR trading program. However, EPA also noted that there were some provisions of Virginia CAIR regulations 9 VAC 5 Chapter 140, Parts II, III, and IV that could be interpreted in a way that might be inconsistent with the Commonwealth's intent. These provisions pertain to definitions associated with Virginia's participation in the regional CAIR trading program, definitions associated with the State's decision to bring its non-EGUs from its NO_X SIP Call budget trading program into the CAIR trading program, and a definition of the term "most stringent state or Federal NO_X emissions limitation" that is based upon the model rule but had been expanded by the Commonwealth to include the situation where more than one fuel is allowed by a permit. EPA determined that VADEQ's interpretations of these provisions, provided in its letter dated September 12, 2007, clarified the language of the Virginia regulations and were consistent with having the EPA-administered CAIR trading program become effective in Virginia. However EPA recommended, and VADEQ agreed to, promulgation of clarifying amendments to these provisions at the Commonwealth's earliest opportunity.

Also, in a rulemaking dated October 19, 2007 (72 FR 59190), EPA changed the definition of "cogeneration unit" in CAIR, the CAIR model cap and trade rule, and the CAIR FIP with respect to the calculation methodology for the efficiency standard of a cogeneration unit. The revised methodology excluded energy input from biomass, making it more likely that units co-firing biomass would be able to meet the efficiency standard and qualify for the cogeneration exemption allowed by CAIR. This change to the Federal requirements was made subsequent to Virginia's adoption of its CAIR regulations, therefore Virginia is required to revise its CAIR regulations to incorporate the changes to the definition of cogeneration unit to allow the exemption for biomass units to apply to sources in the Commonwealth.

II. Summary of SIP Revision

On September 27, 2010, VADEQ submitted a SIP revision that amended Virginia's CAIR regulations. The SIP revision incorporates the clarifying revisions specified in the September 25, 2007 NPR proposing approval of Virginia's CAIR regulations and the changes to the definition of "cogeneration unit" made in EPA's revised CAIR rulemaking dated October 19, 2007. The submission also included several other technical or administrative corrections to these regulations.

The SIP revision applies to the CAIR NO_X Annual Trading Program (9 VAC5 Chapter 140, Part II), the CAIR NO_X Ozone Season Trading Program (9 VAC 5 Chapter 140, Part III), and the CAIR SO_2 Annual Trading Program (9 VAC 5 Chapter 140, Part IV). The provisions of regulations 5–140–1010, 5–140–2010, and 5–140–3010 relating to "Purpose," and the definitions of "CAIR NO_X Annual Trading Program," "CAIR NO_X Ozone Season Trading Program," "CAIR SO_2 Trading Program," and "permitting authority" in regulations 5–140–1020, 5–140–2020, and 5–140–3020 are amended to clarify that the Commonwealth's CAIR sources are full participants in the EPA-administered regional CAIR trading programs and that the Virginia CAIR programs are not trading programs only for sources geographically located within the borders of the Commonwealth. The definition of "most stringent state or Federal NO_X emissions limitation" in regulations 5–140–1020, 5–140–2020, and 5–140–3020 is amended to clarify that the primary fuel, where it is not designated in the permit, is the fuel that would result in the lowest emission rate. Additionally, the provisions of regulations 5–140–1020, 5–140–2020, and 5–140–3020 are amended to reflect the changes to the definition of "cogeneration unit" that were made to the Federal CAIR program described previously.

III. General Information Pertaining to SIP Submittals From the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) "privilege" for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver

for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information (1) that are generated or developed before the commencement of a voluntary environmental assessment; (2) that are prepared independently of the assessment process; (3) that demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) that are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law, Va. Code Sec. 10.1–1198, precludes granting a privilege to documents and information "required by law," including documents and information "required by Federal law to maintain program delegation, authorization or approval," since Virginia must "enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts. * * *" The opinion concludes that "[r]egarding § 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval."

Virginia's Immunity law, Va. Code Sec. 10.1–1199, provides that "[t]o the extent consistent with requirements imposed by Federal law," any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any Federally authorized programs, since "no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity."

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the Federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the CAA, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the CAA is likewise unaffected by this, or any, state audit privilege or immunity law.

III. Proposed Action

EPA is proposing to approve the Virginia SIP revision amending the Commonwealth's CAIR regulations codified at 9 VAC5 Chapter 140, Parts I, II, and III, which was submitted on September 27, 2010. EPA's analysis shows that the revisions are consistent with Federal CAIR requirements. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IV. Statutory and Executive Order Reviews

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

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

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

Dated: May 9, 2011.

W.C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 2011–13068 Filed 5–25–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–HQ–OAR–2011–0081; FRL–9312–1]

RIN 2060–AQ69

Response To Petition From New Jersey Regarding SO_2 Emissions From the Portland Generating Station

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; notice of extension of public comment period.

SUMMARY: On April 7, 2011, EPA published in the **Federal Register** our proposed Response to Petition from New Jersey Regarding SO_2 Emissions from the Portland Generating Station. In the proposal, EPA stated that public comments were to be submitted by May 27, 2011. In order to ensure that the public has a sufficient time to analyze our proposed rule, EPA is extending the public comment period until June 13, 2011.

DATES: *Comments.* The comment period for the proposed rule published April 7, 2011, at 76 FR 19662, is extended. Comments must be received on or before June 13, 2011.

ADDRESSES: *Comments.* Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2011–0081, by one of the following methods:

- *http://www.regulations.gov:* Follow the online instructions for submitting comments.
- *E-mail: a-and-r-docket@epa.gov.*
- *Fax:* (202) 566–9744.
- *Mail:* Attention Docket ID No. EPA–HQ–OAR–2011–0081, U.S. Environmental Protection Agency, EPA West (Air Docket), 1200 Pennsylvania Avenue, NW., Mail code: 6102T, Washington, DC 20460. Please include a total of 2 copies.
- *Hand Delivery:* U.S. Environmental Protection Agency, EPA West (Air Docket), 1301 Constitution Avenue, Northwest, Room 3334, Washington, DC 20004, Attention Docket ID No. EPA–HQ–OAR–2011–0081. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions. Direct your comments to Docket ID No. EPA–HQ–OAR–2011–0081. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, avoid any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/dockets.*

Docket. All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the U.S. Environmental Protection Agency, Air Docket, EPA/DC, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC. 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 Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: For information on this proposed rule, contact Ms. Gobeail McKinley, Air Quality Policy Division, Office of Air Quality Planning and Standards (C504–03), Environmental Protection Agency, Research Triangle Park, NC 27711; telephone number: (919) 541–5246; fax number: (919) 685–3700; e-mail address: *mckinley.gobeail@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *http://www.regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. Send or deliver information identified as CBI only to the following address: Roberto Morales, OAQPS Document Control Officer (C404–02), U.S. EPA, Research Triangle Park, NC 27711, Attention Docket ID No. EPA–HQ–OAR–2011–0081.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

B. Where can I get a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this notice will also be available on the World Wide Web (WWW). Following signature, a copy of this notice will be posted at *http://www.epa.gov/ttn/oargpg/new.html.*

Dated: May 23, 2011.

Mary E. Henigin,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. 2011–13240 Filed 5–25–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–R01–OAR–2010–1080; A–1–FRL–9311–1]

Approval of the Clean Air Act, Section 112(l), Authority for Hazardous Air Pollutants: Perchloroethylene Air Emission Standards for Dry Cleaning Facilities: State of Maine Department of Environmental Protection

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve Maine Department of Environmental Protection's ("ME DEP") request to implement and enforce the amended Chapter 125 Perchloroethylene Dry Cleaner Regulation as a partial substitution for the amended National Emissions Standards for Hazardous Air Pollutants for Perchloroethylene Dry Cleaning Facilities ("Dry Cleaning NESHAP"), as it applies to area sources. This approval would make the ME DEP's amended rule federally enforceable. Major sources and dry cleaners installed in a residence between July 13, 2006 and June 24, 2009 would remain subject to the Federal Dry Cleaning NESHAP.

DATES: Written comments must be received on or before June 27, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R01–OAR–2010–1080 by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: mcdonnell.ida@epa.gov.*
3. *Fax:* (617) 918–0653.
4. *Mail:* "EPA–R01–OAR–2010–1080," Ida E. McDonnell, U.S. Environmental Protection Agency, EPA New England Regional Office, Five Post Office Square, Suite 100 (OEP05–2), Boston, MA 02109–3912.
5. *Hand Delivery or Courier.* Deliver your comments to: Ida E. McDonnell, Manager, Air Permits, Toxics and Indoor Programs Unit, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, Five Post Office Square, 5th Floor, Suite 100 (OEP05–2), Boston, MA 02109–3912. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

Please see the direct final rule which is located in the Rules Section of this **Federal Register** for detailed instructions on how to submit comments. EPA will forward copies of all submitted comments to the Maine Department of Environmental Protection.

FOR FURTHER INFORMATION CONTACT: Susan Lancey, Air Permits, Toxics and Indoor Programs Unit, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, Five Post Office Square, Suite 100 (OEP05–2), Boston, MA 02109–3912, telephone number (617) 918–1656, fax number (617) 918–0656, e-mail *lancey.susan@epa.gov.*

SUPPLEMENTARY INFORMATION: In the Final Rules Section of this **Federal Register**, EPA is approving the State of Maine's Section 112(l) submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

For additional information, see the direct final rule which is located in the Rules Section of this **Federal Register**.

Dated: May 13, 2011.

Ira W. Leighton,

Acting Regional Administrator, EPA New England.

[FR Doc. 2011–13006 Filed 5–25–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2002–0037; FRL–9311–7]

RIN 2060–AN33

National Emission Standards for Hazardous Air Pollutants for Polyvinyl Chloride and Copolymers Production

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; notice of public hearings.

SUMMARY: The EPA published in the **Federal Register** on May 20, 2011, the proposed rule, National Emission Standards for Hazardous Air Pollutants for Polyvinyl Chloride and Copolymers Production. The EPA is announcing two public hearings to be held for the proposed rule.

DATES: The public hearings will be held on June 7, 2011, and June 9, 2011.

ADDRESSES: Public hearings will be held on June 7, 2011, in Houston, Texas, and on June 9, 2011, in Baton Rouge, Louisiana. The Houston, Texas, public hearing will be held at the Houston Marriott South at Hobby Airport in the Port Aransas/Brownsville Room, located at 9100 Gulf Freeway, Houston, Texas 77017; telephone: (713) 943–7979. The June 9, 2011, Baton Rouge, Louisiana, public hearing will be held in the Galvez Building, Olliver Pollock Room, Louisiana Department of Environmental Quality, located at 602 N. Fifth Street, Baton Rouge, Louisiana 70802. Parking is available in the garage located on North Street. A map of the Galvez Building can be found at the following link: *http://www.deq.louisiana.gov/;* telephone number (866) 896–5337.

The two public hearings will convene at 9 a.m. and continue until 8 p.m. (local time). The EPA will make every effort to accommodate all speakers that arrive and register before 8 p.m. A lunch break is scheduled from 12:30 p.m. until 2 p.m. and a dinner break is scheduled from 5 p.m. until 6:30 p.m. during the hearings. The EPA Web site for the rulemaking, which includes the proposal and information about the public hearings, can be found at: *http://www.epa.gov/ttn/atw/pvc/pvcpg.html.*

FOR FURTHER INFORMATION CONTACT: If you would like to present oral testimony at the public hearing, please contact Ms. Teresa Clemons, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Sector Policies and Programs Division (D205–01), Research Triangle Park, North Carolina 27711, telephone: (919) 541–0252, fax

number: (919) 541–4991, e-mail address: *clemons.teresa@epa.gov* (preferred method for registering), no later than the close of business Tuesday, May 31, 2011, to register to present oral testimony. If using e-mail, please provide the following information: time you wish to speak (morning, afternoon, evening), name, affiliation, address, e-mail address, and telephone and fax numbers.

Questions concerning the May 20, 2011, proposed rule should be addressed to Ms. Jodi Howard, U.S. EPA, Office of Air Quality Planning and Standards, Refining and Chemicals Group (E143–01), Research Triangle Park, North Carolina 27711, telephone number: (919) 541–4607, e-mail address: *howard.jodi@epa.gov.*

Public hearing: The proposal for which EPA is holding the public hearings was published in the **Federal Register** on May 20, 2011, and is available at: *http://www.epa.gov/ttn/atw/pvc/pvcpg.html,* and also in the docket identified below. The public hearings will provide interested parties the opportunity to present oral comments regarding the EPA's proposed national emission standards for hazardous air pollutants, including data, views, or arguments concerning the proposal. The EPA may ask clarifying questions during the oral presentations, but will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as any oral comments and supporting information presented at the public hearing.

Commenters should notify Ms. Clemons if they will need specific equipment, or if there are other special needs related to providing comments at the hearings, such as a translator. The EPA will provide equipment for commenters to show overhead slides or make computerized slide presentations if we receive special requests in advance. Oral testimony will be limited to 5 minutes for each commenter. The EPA encourages commenters to provide the Agency with a copy of their oral testimony electronically (via e-mail or CD), or in hard copy form.

The hearing schedules, including lists of speakers, will be posted on EPA's Web sites *http://www.epa.gov/ttn/atw/pvc/pvcpg.html.* Verbatim transcripts of the hearings and written statements will be included in the docket for the rulemaking.

EPA will make every effort to follow the schedule as closely as possible on the day of the hearings; however, please plan for the hearing to run either ahead of schedule or behind schedule.

How can I get copies of this document and other related information?

The EPA has established a docket for the proposed rule, National Emission Standards for Hazardous Air Pollutants for Polyvinyl Chloride and Copolymers Production, under Docket ID No. EPA–HQ–OAR–2002–0037 (available at *http://www.regulations.gov*).

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: May 20, 2011.

Alan Rush,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. 2011–13102 Filed 5–25–11; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[MD Docket No. 11–76; FCC 11–68]

Assessment and Collection of Regulatory Fees For Fiscal Year 2011

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission will revise its Schedule of Regulatory Fees in order to recover an amount of $335,794,000 that Congress has required the Commission to collect for fiscal year 2011. The Communications Act of 1934, as amended, provides for the annual assessment and collection of regulatory fees for annual "Mandatory Adjustments" and "Permitted Amendments" to the Schedule of Regulatory Fees.

DATES: Submit comments on or before June 2, 2011, and reply comments on or before June 9, 2011.

ADDRESSES: You may submit comments, identified by MD Docket No. 11–76, 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://www.fcc.gov/cgb/ecfs.* Follow the instructions for submitting comments.
- *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 phone: 202–418–0530 or TTY: 202–418–0432.
- *E-mail: ecfs@fcc.gov.* Include MD Docket No. 11–76 in the subject line of the message.
- *Mail:* 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 should be addressed to 445 12th Street, SW., Washington DC 20554.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Roland Helvajian, Office of Managing Director at (202) 418–0444.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking (NPRM), FCC 11–68, MD Docket No. 11–76, adopted and released May 3, 2011. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 Twelfth Street, SW., Room CY–A257, Portals II, Washington, DC 20554, and may also be purchased from the Commission's copy contractor, BCPI, Inc., Portals II, 445 Twelfth Street, SW., Room CY–B402, Washington, DC 20554. Customers may contact BCPI, Inc. via their Web site, *http://www.bcpi.com,* or call 1–800–378–3160. This document is available in alternative formats (computer diskette, large print, audio record, and braille). Persons with disabilities who need documents in these formats may contact the FCC by e-mail: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

I. Procedural Matters

A. Ex Parte Rules-Permit-But Disclose Proceeding

1. This is a "permit-but-disclose" proceeding subject to the requirements under section 1.1206(b) of the Commission's rules.[1] *Ex parte* presentations are permissible if disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, *ex parte* or otherwise, are generally prohibited. Persons making oral *ex parte* presentations are reminded that a memorandum summarizing a

[1] *See* 47 CFR 1.1206(b); *see also* 47 CFR 1.1202, 1.1203.

presentation must contain a summary of the substance of the presentation 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.[2] Additional rules pertaining to oral and written presentations are set forth in Section 1.1206(b).

B. Comment Filing Procedures

2. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/* or the Federal eRulemaking Portal: *http://www.regulations.gov.*
- *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

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. The filing hours are 8 a.m. to 7 p.m. 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: 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).

3. Documents in MD Docket No. 11–76 will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., CY–A257, Washington, DC 20554. These documents will also be available free online, via ECFS. Documents will be available electronically in ASCII, Word, and/or Adobe Acrobat.

4. To request information 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 can also be downloaded in Word and Portable Document Format ("PDF") at: *http://www.fcc.gov.*

C. Paperwork Reduction Act

5. This *NPRM* does not contain proposed or modified information collection burden (s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified 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).

D. Congressional Review Act Analysis

6. The Commission will send a copy of this *NPRM* to Congress and the Government Accountability Office pursuant to the Congressional Review Act.[3]

E. Initial Regulatory Flexibility Analysis

7. An initial regulatory flexibility analysis ("IRFA") is contained herein. Comments to the IRFA must be identified as responses to the IRFA and filed by the deadlines for comments on the *Notice.* The Commission will send a copy of the Notice, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

II. Notice of Proposed Rulemaking

Introduction

8. In this *NPRM,* we propose to collect $335,794,000 in regulatory fees for Fiscal Year ("FY") 2011, pursuant to Section 9 of the Communications Act of 1934, as amended (the "Act"). Section 9 regulatory fees are mandated by Congress and are collected to recover the regulatory costs associated with the Commission's enforcement, policy and rulemaking, user information, and international activities.[4] The annual regulatory fee amount to be collected is established each year in the Commission's Annual Appropriations Act which is adopted by Congress and signed by the President and which funds the Commission.[5] In this annual regulatory fee proceeding, we retain many of the established methods, policies, and procedures for collecting Section 9 regulatory fees adopted by the Commission in prior years. Consistent with our established practice, we intend to collect these regulatory fees during a September 2011 filing window in order to collect the required amount by the end of our fiscal year.

III. Discussion

A. FY 2011 Regulatory Fee Assessment Methodology

9. In our FY 2011 regulatory fee assessment, we will use the same Section 9 regulatory fee assessment methodology adopted in FY 2010 and in prior years. Each fiscal year, the Commission proportionally allocates the total amount that must be collected via Section 9 regulatory fees. The results of our FY 2011 regulatory fee assessment methodology (including a comparison to the prior year's results) are contained in the table below. To collect the $335,794,000 required by Congress, we adjusted the FY 2010 amount upward by 4.7 percent and allocated this amount across the various fee categories. Consistent with past practice, we then divided the FY 2011 amount by the number of estimated payment units in each fee category to determine the unit fee.[6] As in prior

[2] *See* 47 CFR 1.1206(b)(2).

[3] *See* 5 U.S.C. 801(a)(1)(A). The Congressional Review Act is contained in Title II, 251, of the CWAAA; *see* Public Law 104–121, Title II, 251, 110 Stat. 868.

[4] 47 U.S.C. 159(a).

[5] *See* Consolidated Appropriations Act, 2010, Public Law 111–117 for the FY 2010 appropriations act language for the Commission establishing the amount of $335,794,000 of offsetting collections to be assessed and collected by the Commission pursuant to Section 9 of the Communications Act.

[6] In many instances, the regulatory fee amount is a flat fee per licensee or regulatee. In some instances, the fee amount represents a per-unit fee (such as for International Bearer Circuits), a per-unit subscriber fee (such as for Cable, Commercial Mobile Radio Service ("CMRS") Cellular/Mobile and CMRS Messaging), or a fee factor per revenue dollar (Interstate Telecommunications Service

Provider ("ITSP") fee). The payment unit is the measure upon which the fee is based, such as a licensee, regulatee, or subscriber fee.

years, for cases involving small fees, *e.g.,* licenses that are renewed over a multiyear term, we divided the resulting unit fee by the term of the license and then rounded these unit fees consistent with the requirements of Section 9(b)(2) of the Act.

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TABLE - Calculation of FY 2011 Revenue Requirements and Pro-Rata Fees

Regulatory fees for the categories shaded in gray are collected by the Commission in advance to cover the term of the license and are submitted along with the application at the time the application is filed.

Fee Category	FY 2011 Payment Units	Years	FY 2010 Revenue Estimate	Pro-Rated FY 2011 Revenue Require-ment	Computed New FY 2011 Regulatory Fee	Round ed New FY 2011 Regula -tory Fee	Expected FY 2011 Revenue
PLMRS (Exclusive Use)	1,200	10	480,000	495,845	41	40	480,000
PLMRS (Shared use)	9,300	10	2,300,000	2,375,921	26	25	2,325,000
Microwave	10,200	10	2,375,000	2,324,270	23	25	2,550,000
218-219 MHz (Formerly IVDS)	3	10	1,950	2,015	67	65	1,950
Marine (Ship)	6,700	10	800,000	774,757	12	10	670,000
GMRS	9,300	5	242,500	284,078	6	5	232,500
Aviation (Aircraft)	4,600	10	230,000	361,553	8	10	460,000
Marine (Coast)	265	10	119,250	127,835	48	50	132,500
Aviation (Ground)	1,100	10	150,000	154,952	14	15	165,000
Amateur Vanity Call Signs	14,600	10	196,840	207,635	1.42	1.42	207,320
AM Class A[4a]	66	1	253,300	256,832	3,891	3,900	257,400
AM Class B[4b]	1,439	1	3,053,700	3,075,578	2,137	2,125	3,057,875
AM Class C[4c]	918	1	1,078,650	1,090,083	1,187	1,175	1,078,650
AM Class D[4d]	1,637	1	3,589,125	3,631,802	2,219	2,225	3,642,325
FM Classes A, B1 & C3[4e]	3,114	1	7,372,000	7,652,108	2,457	2,450	7,629,300
FM Classes B, C, C0, C1 & C2[4f]	3,111	1	9,308,775	9,400,580	3,022	3,025	9,410,775
AM Construction Permits	90	1	43,680	44,212	491	490	44,100
FM Construction Permits[1]	151	1	105,300	101,925	675	675	101,925
Satellite TV	133	1	163,800	167,270	1,258	1,250	166,250
Satellite TV Construction Permit	3	1	2,025	2,015	672	675	2,025
VHF Markets 1-10	20	1	1,631,000	1,692,381	84,619	84,625	1,692,500
VHF Markets 11-25	26	1	1,708,425	1,772,526	68,174	68,175	1,772,550
VHF Markets 26-50	36	1	1,404,150	1,457,127	40,476	40,475	1,457,100

Fee Category	FY 2011 Payment Units	Years	FY 2010 Revenue Estimate	Pro-Rated FY 2011 Revenue Requirement	Computed New FY 2011 Regulatory Fee	Rounded New FY 2011 Regulatory Fee	Expected FY 2011 Revenue
VHF Markets 51-100	52	1	1,140,000	1,182,936	22,749	22,750	1,183,000
VHF Remaining Markets	127	1	747,250	774,447	6,098	6,100	774,700
VHF Construction Permits[1]	2	1	18,375	12,200	6,100	6,100	12,200
UHF Markets 1-10	113	1	3,776,175	3,915,430	34,650	34,650	3,915,450
UHF Markets 11-25	107	1	3,398,475	3,524,319	32,938	32,950	3,525,650
UHF Markets 26-50	144	1	2,910,600	3,016,311	20,947	20,950	3,016,800
UHF Markets 51-100	238	1	2,829,750	2,932,289	12,321	12,325	2,933,350
UHF Remaining Markets	264	1	835,700	866,787	3,283	3,275	864,600
UHF Construction Permits[1]	10	1	36,600	32,750	3,275	3,275	32,750
Broadcast Auxiliaries	26,850	1	275,000	284,078	11	10	268,500
LPTV/Translators/ Boosters/Class A TV	3,607	1	1,411,000	1,425,553	395	395	1,424,765
CARS Stations	470	1	173,250	174,578	371	370	173,900
Cable TV Systems	63,400,000	1	57,405,000	58,633,597	0.92482	0.93	58,962,000
Interstate Telecommunication Service Providers	$41,000,000,000	1	151,117,000	148,100,156	0.0036122	0.00361	148,010,000
CMRS Mobile Services (Cellular/Public Mobile)	289,000,000	1	50,940,000	51,522,378	0.1783	0.18	52,020,000
CMRS Messag. Services	4,700,000	1	480,000	376,000	0.0800	0.080	376,000
BRS[2]	1,690	1	514,600	523,900	310	310	523,900
LMDS	520	1	158,100	161,200	310	310	161,200
Per 64 kbps Int'l Bearer Circuits Terrestrial (Common) & Satellite (Common & Non-Common)	2,600,000	1	1,130,233	1,148,478	.442	.44	1,144,000
Submarine Cable Providers (see chart in Appendix C)[3]	39.375	1	7,983,860	8,076,107	205,107	205,100	8,075,813

Fee Category	FY 2011 Payment Units	Years	FY 2010 Revenue Estimate	Pro-Rated FY 2011 Revenue Require-ment	Computed New FY 2011 Regulatory Fee	Round ed New FY 2011 Regula -tory Fee	Expected FY 2011 Revenue
Earth Stations	3,575	1	864,000	878,575	246	245	875,875
Space Stations (Geostationary)	87	1	11,129,475	11,429,445	131,373	131,375	11,429,625
Space Stations (Non-Geostationary	6	1	828,300	850,528	141,755	141,750	850,500
****** Total Estimated Revenue to be Collected			336,712,213	337,295,341			338,091,623
****** Total Revenue Requirement			335,794,000	335,794,000			335,794,000
Difference			918,213	1,501,341			2,297,623

[1] The FM Construction Permit revenues and the VHF and UHF Construction Permit revenues were adjusted to set the regulatory fee to an amount no higher than the lowest licensed fee for that class of service. The reductions in the FM Construction Permit revenues are offset by increases in the revenue totals for FM radio stations. Similarly, reductions in the VHF and UHF Construction Permit revenues are offset by increases in the revenue totals for VHF and UHF television stations, respectively.

[2] MDS/MMDS category was renamed Broadband Radio Service (BRS). See Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, Report & Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 14165, 14169, para. 6 (2004).

[3] The chart at the end of Appendix B lists the submarine cable bearer circuit regulatory fees (common and non-common carrier basis) that resulted from the adoption of the following proceedings: Assessment and Collection of Regulatory Fees for Fiscal Year 2008, Second Report and Order (MD Docket No. 08-65, RM-11312), released March 24, 2009; and Assessment and Collection of Regulatory Fees for Fiscal Year 2009 and Assessment and Collection of Regulatory Fees for Fiscal Year 2008, Notice of Proposed Rulemaking and Order (MD Docket No. 09-65, MD Docket No. 08-65), released on May 14, 2009.

[4] The fee amounts listed in the column entitled "Rounded New FY 2011 Regulatory Fee" constitute a weighted average media regulatory fee by class of service. The actual FY 2011 regulatory fees for AM/FM radio station are listed on a grid located in Table – FY 2011 Schedule of Regulatory Fees.

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10. In calculating the FY 2011 regulatory fees listed in (*see* Table—FY 2011 Schedule of Regulatory Fees below), we adjusted the FY 2011 list of payment units (*see* Table—Sources of Payment Unit Estimates for FY 2011 below) based upon licensee databases, industry and trade group projections, as well as prior year payment information. In some instances, Commission licensee databases are used; in other instances, actual prior year payment records and/or industry and trade association projections are used in determining the payment units.[7] Where appropriate, we adjusted and rounded our final estimates to take into consideration events that may impact the number of units for which regulatees submit payment, such as waivers and exemptions that may be filed in FY 2011, and fluctuations in the number of licenses or station operators due to economic, technical, or other reasons. Our estimated FY 2011 payment units, therefore, are based on several variable factors that are relevant to each fee category. The fee rate may also be rounded or adjusted slightly to account for these variables.

[7] The databases we consulted are the following: the Commission's Universal Licensing System ("ULS"), International Bureau Filing System ("IBFS"), Consolidated Database System ("CDBS") and Cable Operations and Licensing System ("COALS"). We also consulted reports generated within the Commission such as the Wireline Competition Bureau's *Trends in Telephone Service* and the Wireless Telecommunications Bureau's *Numbering Resource Utilization Forecast and Annual CMRS Competition Report,* as well as industry sources including, but not limited to, *Television & Cable Factbook* by Warren Publishing, Inc. and the *Broadcasting and Cable Yearbook* by Reed Elsevier, Inc.

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TABLE - FY 2011 Schedule of Regulatory Fees

Regulatory fees for the categories shaded in gray are collected by the Commission in advance to cover the term of the license and are submitted along with the application at the time the application is filed.

Fee Category	Annual Regulatory Fee (U.S. $'s)
PLMRS (per license) (Exclusive Use) (47 CFR part 90)	40
Microwave (per license) (47 CFR part 101)	25
218-219 MHz (Formerly Interactive Video Data Service) (per license) (47 CFR part 95)	65
Marine (Ship) (per station) (47 CFR part 80)	10
Marine (Coast) (per license) (47 CFR part 80)	50
General Mobile Radio Service (per license) (47 CFR part 95)	5
Rural Radio (47 CFR part 22) (previously listed under the Land Mobile category)	25
PLMRS (Shared Use) (per license) (47 CFR part 90)	25
Aviation (Aircraft) (per station) (47 CFR part 87)	10
Aviation (Ground) (per license) (47 CFR part 87)	15
Amateur Vanity Call Signs (per call sign) (47 CFR part 97)	1.42
CMRS Mobile/Cellular Services (per unit) (47 CFR parts 20, 22, 24, 27, 80 and 90)	.18
CMRS Messaging Services (per unit) (47 CFR parts 20, 22, 24 and 90)	.08
Broadband Radio Service (formerly MMDS/ MDS) (per license) (47 CFR part 21)	310
Local Multipoint Distribution Service (per call sign) (47 CFR, part 101)	310
AM Radio Construction Permits	490
FM Radio Construction Permits	675
TV (47 CFR part 73) VHF Commercial	
Markets 1-10	84,625
Markets 11-25	68,175
Markets 26-50	40,475
Markets 51-100	22,750

Fee Category	Annual Regulatory Fee (U.S. $'s)
Remaining Markets	6,100
Construction Permits	6,100
TV (47 CFR part 73) UHF Commercial	
Markets 1-10	34,650
Markets 11-25	32,950
Markets 26-50	20,950
Markets 51-100	12,325
Remaining Markets	3,275
Construction Permits	3,275
Satellite Television Stations (All Markets)	1,250
Construction Permits – Satellite Television Stations	675
Low Power TV, Class A TV, TV/FM Translators & Boosters (47 CFR part 74)	395
Broadcast Auxiliaries (47 CFR part 74)	10
CARS (47 CFR part 78)	370
Cable Television Systems (per subscriber) (47 CFR part 76)	.93
Interstate Telecommunication Service Providers (per revenue dollar)	.00361
Earth Stations (47 CFR part 25)	245
Space Stations (per operational station in geostationary orbit) (47 CFR part 25) also includes DBS Service (per operational station) (47 CFR part 100)	131,375
Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25)	141,750
International Bearer Circuits - Terrestrial/Satellites (per 64KB circuit)	.44
International Bearer Circuits - Submarine Cable	See Table Below

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TABLE—FY 2011 Schedule of Regulatory Fees (Continued)

FY 2011 RADIO STATION REGULATORY FEES

Population served	AM Class A	AM Class B	AM Class C	AM Class D	FM Classes A, B1 & C3	FM Classes B, C, C0, C1 & C2
≤25,000	$700	$575	$525	$600	$675	$850
25,001–75,000	1,400	1,150	800	900	1,350	1,500
75,001–150,000	2,100	1,450	1,050	1,500	1,850	2,750
150,001–500,000	3,150	2,450	1,575	1,800	2,875	3,600
500,001–1,200,000	4,550	3,750	2,625	3,000	4,550	5,300
1,200,001–3,000,00	7,000	5,750	3,950	4,800	7,425	8,500
>3,000,000	8,400	6,900	5,000	6,000	9,450	11,050

FY 2011 Schedule of Regulatory Fees
(Continued)

INTERNATIONAL BEARER CIRCUITS—SUBMARINE CABLE

Submarine cable systems (capacity as of December 31, 2010)	Fee amount	Address
<2.5 Gbps	$12,825	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.
2.5 Gbps or greater, but less than 5 Gbps	25,650	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.
5 Gbps or greater, but less than 10 Gbps	51,275	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.
10 Gbps or greater, but less than 20 Gbps	102,575	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.
20 Gbps or greater	205,125	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.

Table—Sources of Payment Unit Estimates for FY 2011

In order to calculate individual service fees for FY 2011, we adjusted FY 2010 payment units for each service to more accurately reflect expected FY 2011 payment liabilities. We obtained our updated estimates through a variety of means. For example, we used Commission licensee data bases, actual prior year payment records and industry and trade association projections when available. The databases we consulted include our Universal Licensing System ("ULS"), International Bureau Filing System ("IBFS"), Consolidated Database System ("CDBS") and Cable Operations and Licensing System ("COALS"), as well as reports generated within the Commission such as the Wireline Competition Bureau's *Trends in Telephone Service* and the Wireless Telecommunications Bureau's *Numbering Resource Utilization Forecast.*

We sought verification for these estimates from multiple sources and, in all cases; we compared FY 2011 estimates with actual FY 2010 payment units to ensure that our revised estimates were reasonable. Where appropriate, we adjusted and/or rounded our final estimates to take into consideration the fact that certain variables that impact on the number of payment units cannot yet be estimated with sufficient accuracy. These include an unknown number of waivers and/or exemptions that may occur in FY 2011 and the fact that, in many services, the number of actual licensees or station operators fluctuates from time to time due to economic, technical, or other reasons. When we note, for example, that our estimated FY 2011 payment units are based on FY 2010 actual payment units, it does not necessarily mean that our FY 2011 projection is exactly the same number as in FY 2010. We have either rounded the FY 2011 number or adjusted it slightly to account for these variables.

TABLE—SOURCES OF PAYMENT UNIT ESTIMATES FOR FY 2011 (CONTINUED)

Fee Category	Sources of payment unit estimates
Land Mobile (All), Microwave, 218–219 MHz, Marine (Ship & Coast), Aviation (Aircraft & Ground), GMRS, Amateur Vanity Call Signs, Domestic Public Fixed.	Based on Wireless Telecommunications Bureau ("WTB") projections of new applications and renewals taking into consideration existing Commission licensee data bases. Aviation (Aircraft) and Marine (Ship) estimates have been adjusted to take into consideration the licensing of portions of these services on a voluntary basis.
CMRS Cellular/Mobile Services	Based on WTB projection reports, and FY 10 payment data.
CMRS Messaging Services	Based on WTB reports, and FY 10 payment data.
AM/FM Radio Stations	Based on CDBS data, adjusted for exemptions, and actual FY 2010 payment units.
UHF/VHF Television Stations	Based on CDBS data, adjusted for exemptions, and actual FY 2010 payment units.
AM/FM/TV Construction Permits	Based on CDBS data, adjusted for exemptions, and actual FY 2010 payment units.
LPTV, Translators and Boosters, Class A Television.	Based on CDBS data, adjusted for exemptions, and actual FY 2010 payment units.
Broadcast Auxiliaries	Based on actual FY 2010 payment units.
BRS (formerly MDS/MMDS)	Based on WTB reports and actual FY 2010 payment units.
LMDS	Based on WTB reports and actual FY 2010 payment units.
Cable Television Relay Service ("CARS") Stations.	Based on data from Media Bureau's COALS database and actual FY 2010 payment units.
Cable Television System Subscribers	Based on publicly available data sources for estimated subscriber counts and actual FY 2010 payment units.
Interstate Telecommunication Service Providers	Based on FCC Form 499–Q data for the four quarters of calendar year 2010, the Wireline Competition Bureau projected the amount of calendar year 2009 revenue that will be reported on 2011 FCC Form 499–A worksheets in April, 2011.
Earth Stations	Based on International Bureau ("IB") licensing data and actual FY 2010 payment units.
Space Stations (GSOs & NGSOs)	Based on IB data reports and actual FY 2010 payment units.
International Bearer Circuits	Based on IB reports and submissions by licensees.
Submarine Cable Licenses	Based on IB license information.

11. When calculating the fee methodology for AM and FM radio stations, we consider many factors, such as facility attributes and the population served by each station. The calculation of the population served is determined by coupling current United States Census Bureau data with technical and engineering data, as detailed in the table below. In FY 2011, we will begin to incorporate new Census data that was taken in 2010, and this could have an impact in altering the fees of some radio stations. Hence, the population served, as well as the class and type of service (AM or FM), will continue to be the

principal variables in determining the amount of regulatory fees to be paid.[8]

Table—Factors, Measurements, and Calculations That Go Into Determining Station Signal Contours and Associated Population Coverages

AM Stations

For stations with nondirectional daytime antennas, the theoretical radiation was used at all azimuths. For stations with directional daytime antennas, specific information on each day tower, including field ratio, phasing, spacing and orientation was retrieved, as well as the theoretical pattern root-mean-square of the radiation in all directions in the horizontal plane ("RMS") figure milliVolt per meter (mV/m) @ 1 km) for the antenna system. The standard, or modified standard if pertinent, horizontal plane radiation pattern was calculated using techniques and methods specified in Sections 73.150 and 73.152 of the Commission's rules (*see* 47 CFR 73.150 and 73.152). Radiation values were calculated for each of 360 radials around the transmitter site. Next, estimated soil conductivity data was retrieved from a database representing the information in FCC Figure R3 (*see* Map of Estimated Effective Ground Conductivity in the United States, 47 CFR 73.190 Figure R3). Using the calculated horizontal radiation values, and the retrieved soil conductivity data, the distance to the principal community (5 mV/m) contour was predicted for each of the 360 radials. The resulting distance to principal community contours were used to form a geographical polygon. Population counting was accomplished by determining which 2000 block centroids were contained in the polygon. (A block centroid is the center point of a small area containing population as computed by the U.S. Census Bureau.) The sum of the population figures for all enclosed blocks represents the total population for the predicted principal community coverage area.

FM Stations

The greater of the horizontal or vertical effective radiated power ("ERP") (kW) and respective height above average terrain ("HAAT") (m) combination was used. Where the antenna height above mean sea level ("HAMSL") was available, it was used in lieu of the average HAAT figure to calculate specific HAAT figures for each of 360 radials under study. Any available directional pattern information was applied as well, to produce a radial-specific ERP figure. The HAAT and ERP figures were used in conjunction with the Field Strength (50–50) propagation curves specified in 47 CFR 73.313 of the Commission's rules to predict the distance to the principal community (70 dBu (decibel above 1 microVolt per meter) or 3.17 mV/m) contour for each of the 360 radials (47 CFR 73.313). The resulting distance to principal community contours were used to form a geographical polygon. Population counting was accomplished by determining which 2000 block centroids were contained in the polygon. The sum of the population figures for all enclosed blocks represents the total population for the predicted principal community coverage area.

B. Regulatory Fee Obligations for Digital Low Power, Class A, and TV Translators/Boosters

12. The digital transition to full-service television stations was completed on June 12, 2009, but the digital transition for Low Power, Class A, and TV Translators/Boosters remains voluntary, and there is presently no set date for the completion of this transition. Historically, the discussion of digital transition conversion with respect to regulatory fees has applied only to full-service television stations. As a result, the "digital only" exemption does not impact this class of regulatees. Because the digital transition in the Low Power, Class A, and TV Translators/Booster facilities is still voluntary and the transition will occur over a period time, some facilities may still be in the process of converting from an analog to a digital service. During this transition period, licensees of Low Power, Class A, and TV Translator/Booster facilities may be operating in analog mode, in digital mode, or in an analog and digital simulcast mode. For regulatory fee purposes, a fee will be assessed for each facility operating either in an analog or digital mode. In instances in which a licensee is operating in both an analog and digital mode as a simulcast, a single regulatory fee will be assessed for this analog facility that has a digital companion channel. As greater numbers of facilities convert to digital mode, the Commission will provide revised instructions on how regulatory fees will be assessed.

C. Commercial Mobile Radio Service Messaging Service

13. Commercial Mobile Radio Service ("CMRS") Messaging Service, which replaced the CMRS One-Way Paging fee category in 1997, includes all narrowband services.[9] Since 1997, the number of subscribers has declined from 40.8 million to 4.9 million, and there does not appear to be any sign of recovery to the subscriber levels of 1997–1999.[10] Maintaining the fee at the existing level of $.08 per subscriber is the minimum reasonable and appropriate action to take under the prevailing circumstances in the paging industry. We propose in FY 2011 to continue maintaining the regulatory fee rate at $0.08 per subscriber due to the declining subscriber base in this industry. We seek comment on this proposal.

D. Interstate Telecommunications Service Provider (ITSP)

14. In our FY 2010 Regulatory Fee *Report and Order,*[11] we acknowledged that the revenue base upon which the ITSP fee is calculated has been decreasing for several years.[12] Because of this continued decline, we limited the increase in the FY 2010 ITSP fee rate from $.00342 to $.00349, and assessed a slightly higher fee across all other fee categories. In FY 2011, the ITSP revenue base has experienced an even more significant decline. Over the past six months, we note an additional decline of nine percent (9%) in the ITSP base revenue, which would increase the ITSP

[8] In addition, beginning in FY 2005, we established a procedure by which we set regulatory fees for AM and FM radio and VHF and UHF television Construction Permits each year at an amount no higher than the lowest regulatory fee for a licensed station in that respective service category. For example, in FY 2010 the regulatory fee for an AM radio station Construction Permit was no higher than the regulatory fee for an AM Class C radio station serving a population of less than 25,000.

[9] *See Assessment and Collection of Regulatory Fees for Fiscal Year 1997,* MD Docket No. 96–186, Report and Order, 12 FCC Rcd 17161, 17184–85, para. 60 (1997) ("*FY 1997 Report and Order*").

[10] Between FY 1997 and FY 2010, the subscriber base in the paging industry declined 89 percent from 40.8 million to 4.9 million subscribers, according to FY 2010 collections data as of September 30, 2010.

[11] *See Assessment and Collection of Regulatory Fees for Fiscal Year 2010,* MD Docket No. 10–87, Report and Order, 25 FCC Rcd 9278 at para. 31 (2010) ("*FY 2010 Report and Order*").

[12] In FY 2010 ITSP, the fee factor in the FY 2010 NPRM of $.00351 was based on December 2009 ITSP revenue data. April 2010 ITSP revenue data, however, reflected revenues 3.4 percent lower than projections. This revenue decrease would have resulted in an increase in the resulting fee factor from the projected $.00351 to a fee factor of $.00364. Thus, based on the proposed methodology of the FY 2010 NPRM and the revised revenue numbers, the ITSP fee factor would have increased from $.00342 (FY 2009 ITSP fee rate) to $.00364. The concerns of these providers, which collectively represent 46.82 percent of all regulatory fees paid in any given year, resulted in the adoption, as an interim measure, an ITSP fee rate at $.00349, which is a 2.1% increase from FY 2009. We find this to be a reasonable interim measure pending our review of whether part of that 46.82 percent of the regulatory fee burden might be moved from ITSP in the context of fundamental reform.

fee rate for FY 2011 to $.00402,[13] an increase of 15% from the fee rate adopted in FY 2010.[14] This increase in the FY 2011 ITSP fee rate from $.00349 to $.00402 will be detrimental to the operations of many small and medium ITSP providers, and will further burden a regulatory fee category already bearing the majority of the agency's overall regulatory fee burden. Therefore, as we did in FY 2010, we propose to limit the increase of the FY 2011 ITSP fee rate to $.00361 per revenue dollar, and assess a slightly higher fee across all other regulatory fee categories. We seek comment on this proposal.

15. Each year, the Commission downloads 499–A revenue data[15] onto a FCC Form 159–W to establish an ITSP regulatory fee bill. These bills are then loaded into the Commission's electronic payment and filing system ("Fee Filer") so that providers can view and pay their annual regulatory fee bill. Historically, in creating ITSP regulatory fee bills, the Commission separated 499–A filers into two categories: (1) Those whose primary revenue stream categorized them as interstate telecommunications service providers (ITSP), and (2) those whose primary revenue stream was considered to be non-ITSP, such as wireless, satellite, and other service providers. Simply stated, the logic here was to categorize 499–A filers into two regulatory fee paying categories—those that pay ITSP regulatory fees on the basis of a fee factor per revenue dollar, and those whose primary revenue stream would place them in a category other than ITSP ("non-ITSP providers"), such as wireless or satellite carriers, that pay regulatory fees on some other basis (*e.g.* wireless carriers pay regulatory fees on a per subscriber basis). By separating 499–A filers into these two categories (ITSP providers and non-ITSP providers), the Commission was not assessing the ITSP revenues of certain particular entities (non-ITSP providers) simply because these entities were paying another form of regulatory fee (*e.g.* wireless or satellite fees). After more careful consideration, we realize that this treatment resulted in predominantly ITSP providers paying fees on both ITSP revenues and, if they also provided other services, a per unit subscriber fee on other services (*e.g.* wireless services), while non-ITSP paid on a per unit basis only (*e.g.* for wireless services), and were not assessed fees on their ITSP revenues. There is no basis for this disparate treatment; it is only logical that these wireless providers and other non-ITSP providers be subject to ITSP fees based on their ITSP revenues, similar to the fees that are currently paid by wireline carriers. Therefore, instead of separating 499–A filers into these two categories of regulatory fee payers, we propose to assess ITSP regulatory fees on all ITSP revenues, regardless of the predominant classification of the payor. More specifically, we find that a more equitable way of assessing ITSP regulatory fees is to assess an ITSP fee on 499–A reported ITSP revenue items regardless of whether the payor is predominantly an ITSP or a non-ITSP provider. If FCC Form 499–A has revenues identified on lines 412(e), 420(d), and/or 420(e), the provider would be subject to ITSP regulatory fees.[16]

16. FCC Form 159–W was established in FY 2001 to assist providers in transposing revenue information from their FCC Form 499–A to a worksheet that would assist them in computing their regulatory fee obligation. Initially, the Form 159–W worksheet was left blank for the provider to complete and mail it in along with their check. In later years, the Commission provided a pre-completed Form 159–W based on revenue information directly from FCC Form 499–A. In this *Notice of Proposed Rulemaking*, the Commission proposes to assess a regulatory fee on all providers that have subject revenues on Line 14 of Form 159–W, which after the fee factor is applied, results in a regulatory fee obligation of $10 or greater. By assessing regulatory fees on all providers ($10 or greater), we believe we can achieve a more equitable assessment of ITSP regulatory fees across all providers, and reduce the subjective factor involved in identifying some providers as non-ITSP because their primary business is cellular or a satellite provider. If ITSP revenues are derived from the service and identified on the appropriate lines of Form 499–A (and subsequently transposed to Form 159–W), then a regulatory fee would be assessed on those revenues. In FY 2011, we believe our proposal will add $2.0 billion to the unit base estimate, which will help to support maintaining the FY 2011 ITSP fee factor rate at $0.00361, reducing the impact of this limitation on all other regulatory fee categories. We seek comment on this proposal of assessing regulatory fees on ITSP revenues from all providers.

E. Fee Waiver Policies

17. As our rules expressly provide, petitions for waiver of a regulatory fee must be accompanied by the required fee "unless accompanied by a petition to defer payment due to financial hardship, supported by documentation of the financial hardship."[17] Similarly, petitions for reduction of fees filed with less than the full fee due must be accompanied by a request for deferral "supported by documentation of financial hardship."[18] However, citing section 1.1166(b) of the rules, which states that "Deferrals of fees will be granted for a period of six months following the date that the fee is initially due," some have argued that, even where supporting documentation of financial hardship is not provided, a regulatee can delay its payment of the fees owed for up to six months simply by requesting the deferral. That argument is inconsistent with sections 1.1166(c) and (d) of our rules, which provide that petitions for waivers or reductions will be dismissed if they are not accompanied by the full fee owed, unless the regulatee requests a deferral of payment supported by documentation of financial hardship.[19] A regulatee's mere allegation of financial hardship thus does not automatically entitle it to a deferral of its obligation to pay regulatory fees; only a properly supported claim of financial hardship will entitle the regulatee to a deferral. Accordingly, if a request for deferral is not supported by documentation of financial hardship, it will be denied, and an associated petition for waiver or reduction will be dismissed. A regulatee cannot delay payment on the theory that its deferral request triggered an automatic six-month extension of its obligation to pay. We thus propose to amend section 1.1166(b) of the Rules[20] to read, "Deferrals of fees, if granted, will be for

[13] If the Commission did not provide any relief or consider changes in the ITSP revenue stream, the fee factor rate would be $0.00402 per revenue dollar.

[14] *See FY 2010 Report and Order* at Appendix C, Page 28.

[15] FCC Form 499–A is filed annually with USAC on April 1st, but it can be revised many times for up to a year of the April 1st filing.

[16] *See* FCC Form 159–W on page 7 of the Commission's Interstate Telecommunications Service Provider (ITSP) Fact Sheet, August 2010. 499–A Form Line 412(e) corresponds with Line 1 of FCC Form 159–W; 499–A Form Line 420(d) corresponds with Line 2 of FCC Form 159–W; and 499–A Form Line 420(e) corresponds with Line 3 of FCC Form 159–W. However, from FCC Form 159–W revenue Lines 1 through 3, a provider can also subtract Lines 5 through 12, resulting in a net revenue amount upon which regulatory fees would be due.

[17] 47 CFR 1.1166(c).

[18] 47 CFR 1.1166(d).

[19] 47 CFR 1.1166(c) and (d) (requests for waivers and reductions of fees "that do not include the required fees or forms will be dismissed unless accompanied by a petition to defer payment due to financial hardship, *supported by documentation of the financial hardship*."

[20] 47 CFR 1.1166(b).

a designated period of time not to exceed six months." We seek comment on this rule clarification.

F. Administrative and Operational Issues

18. In FY 2009, the Commission implemented several changes in procedures which simplified the payment and reconciliation processes of FY 2009 regulatory fees. These changes proved to be very helpful to both licensees and to the Commission, and we propose in the following paragraphs to expand upon these improvements. In FY 2011, the Commission will promote greater use of technology (and less use of paper) to improve the regulatory fee notification and collection process. In addition to seeking comment on the specific initiatives discussed in the paragraphs below, we ask whether there are other steps we could take to promote greater use of technology in collecting regulatory fees.

1. Mandatory Use of Fee Filer

19. In *FY 2009,* we instituted a mandatory filing requirement using the Commission's electronic filing and payment system (also known as "Fee Filer").[21] Licensees filing their annual regulatory fee payments were required to begin the process by entering the Commission's Fee Filer system with a valid FRN and password.[22] This change was beneficial to both licensees and to the Commission. For licensees, the mandatory use of Fee Filer eliminates the need to manually complete and submit a hardcopy Form 159, and for the Commission, the data in electronic format made it much easier to process payments more efficiently and effectively. We propose to continue to make the use of Fee Filer for filing annual regulatory fees mandatory. We seek comment on this proposal. We also request comment on ways we might improve the mandatory use of Fee Filer. The mandatory use of Fee Filer does not mean that licensees are expected to pay only through Fee Filer—it is only mandatory for licensees to begin the process of filing their annual regulatory fees using Fee Filer.

2. Notification and Collection of Regulatory Fees

a. Pre-Bills

20. In prior years, the Commission mailed pre-bills via surface mail to licensees in select regulatory fee categories: Interstate telecommunications service providers ("ITSPs"), Geostationary ("GSO") and Non-Geostationary ("NGSO") satellite space station licensees,[23] holders of Cable Television Relay Service ("CARS") licenses, and Earth Station licensees.[24] The remaining regulatees did not receive pre-bills. In our *FY 2009 Report and Order,* the Commission decided to have the attributes of these pre-bills viewed in Fee Filer, rather than mailing pre-bills out to licensees via surface mail.[25] In FY 2011, the Commission will continue to reduce its use of hardcopy documents by not mailing out annual regulatory fee pre-bills, and instead place the pre-bill information on the Commission's Web site for licensees to access through the Commission's electronic filing and payment system ("Fee Filer"). Regulatees can also look to the Commission's Web site for information on upcoming events and deadlines relating to regulatory fees. We ask whether further changes to our system of electronic notification would serve to more efficiently and effectively inform regulatees of information and procedures pertaining to regulatory fees.

IV. Procedural Matters

21. Included below are procedural items as well as our current payment and collection methods which we have revised over the past several years to expedite the processing of regulatory fee payments. We do not propose changes to these procedures. Rather, we include them here as a useful way of reminding regulatory fee payers and the public about these aspects of the annual regulatory fee collection process.

A. Public Notices and Fact Sheets

22. Each year we post public notices and fact sheets pertaining to regulatory fees on our Web site. These documents contain information about the payment due date and relevant regulatory fee payment procedures. We will continue to post this information on *http://www.fcc.gov/fees/regfees.html*, but as in previous years, we will not send out public notices and fact sheets to regulatees *en masse.*

B. Assessment Notifications

1. Media Services Licensees

23. Beginning in FY 2003, we sent fee assessment notifications via surface mail to media services entities on a per-facility basis.[26] These notifications provided the assessed fee amount for the facility in question, as well as the data attributes that determined the fee amount. We have since refined this initiative to be more electronic and paperless.[27] In our FY 2010 *NPRM,* we proposed to discontinue mailing the media notifications beginning in FY 2011, relying instead on information on the Commission's Web site and the use of the Commission-authorized Web site at *http://www.fccfees.com.*[28] We kept the comment and reply comment period open until September 30, 2010 to be receptive to the needs of media licensees. We received no comments or reply comments on this particular issue. Therefore, beginning in FY 2011, we will discontinue mailing hardcopy notification assessment letters to media licensees.

24. Every ten years, when the United States Census data is released, this data is incorporated into the population counts of AM & FM radio stations on a county basis. These population counts, along with the station's class and type of service, are the basis for determining regulatory fees. Although the 2010 Census data has been completed, the data is still subject to revisions. In addition, because FY 2011 regulatory fees are determined on the basis of the station's attributes as of October 1, 2010, it would be inappropriate to apply incomplete 2010 Census data in

[21] *FY 2009 Report and Order* at paras. 20 and 21.

[22] Therefore, it is very important for licensees to have a current and valid FRN address on file in the Commission's Registration System (CORES).

[23] Geostationary orbit space station ("GSO") licensees received regulatory fee pre-bills for satellites that (1) were licensed by the Commission and operational on or before October 1 of the respective fiscal year; and (2) were not co-located with and technically identical to another operational satellite on that date (*i.e.,* were not functioning as a spare satellite). Non-geostationary orbit space station ("NGSO") licensees received regulatory fee pre-bills for systems that were licensed by the Commission and operational on or before October 1 of the respective fiscal year.

[24] A pre-bill is considered an account receivable in the Commission's accounting system. Pre-bills reflect the amount owed and have a payment due date of the last day of the regulatory fee payment window. Consequently, if a pre-bill is not paid by the due date, it becomes delinquent and is subject to our debt collection procedures. *See also* 47 CFR 1.1161(c), 1.1164(f)(5), and 1.1910.

[25] *See FY 2009 Report and Order* at paras. 24, 26.

[26] As stated previously in a footnote, a pre-bill is considered an account receivable in the Commission's accounting system. Pre-bills include an amount owed and have a payment due date of the last day of the regulatory fee payment window. If a pre-bill is not paid by the due date, it becomes delinquent and is subject to our debt collection procedures. On the other hand, an assessment is a proposed statement of the amount of regulatory fees owed by an entity to the Commission (or proposed subscriber count to be ascribed for purposes of setting the entity's regulatory fee), but it is not entered into the Commission's accounting system as a current debt.

[27] Some of those refinements have been to provide licensees with a Commission-authorized Web site to update or correct any information concerning their facilities, and to amend their fee-exempt status, if need be. The notifications also provide licensees with a telephone number to call in the event that they need customer assistance.

[28] *See Assessment and Collection of Regulatory Fees for Fiscal Year 2010,* Report and Order, 25 FCC Rcd 9278 at para. 42 (2010) ("*FY 2010 Report and Order*").

determining FY 2011 regulatory fees for radio stations. Therefore, we will apply 2010 Census data in determining the population counts of radio stations as of October 1, 2011, as part of our calculations of FY 2012 regulatory fees.

2. CMRS Cellular and Mobile Services Assessments

25. As we have done in prior years, our procedures for conveying CMRS subscriber counts to providers are as follows. We will mail an initial assessment letter to Commercial Mobile Radio Service (CMRS) providers using data from the Numbering Resource Utilization Forecast ("NRUF") report that is based on "assigned" number counts that have been adjusted for porting to net Type 0 ports ("in" and "out").[29] The letter will include a listing of the carrier's Operating Company Numbers ("OCNs") upon which the assessment is based.[30] The letters will not include OCNs with their respective assigned number counts, but rather, an aggregate total of assigned numbers for each carrier.

26. A carrier wishing to revise their subscriber count can access Fee Filer within a designated time frame to revise their count. Providers should follow the prompts in Fee Filer to record their subscriber revisions, along with any supporting documentation.[31] The Commission will then review the revised count and supporting documentation and either approve or disapprove the submission in Fee Filer. If the submission is disapproved, the Commission will attempt to contact the provider so that the provider will have an opportunity to discuss its revised subscriber count and/or provide additional supporting documentation. If we receive no response or correction to the initial assessment letter, or we do not reverse the disapproval of the provider's revised count submission, we will expect the fee payment to be based on the number of subscribers listed on the initial assessment letter. Once the timeframe for revision has passed, the subscriber counts will be finalized. These subscriber counts will then be the basis upon which CMRS regulatory fees will be expected. Providers will be able to view their final subscriber counts online in Fee Filer. A final CMRS assessment letter will not be mailed out.

27. Because some carriers do not file the NRUF report, they may not receive an initial letter of assessment. In these instances, the carriers should compute their fee payment using the standard methodology[32] that is currently in place for CMRS Wireless services (*e.g.,* compute their subscriber counts as of December 31, 2010), and submit their fee payment accordingly. Whether a carrier receives an assessment letter or not, the Commission reserves the right to audit the number of subscribers for which regulatory fees are paid. In the event that the Commission determines that the number of subscribers paid is inaccurate, the Commission will bill the carrier for the difference between what was paid and what should have been paid.

3. Submarine Cable Allocation

28. The Commission collects a revenue amount each year based on a Congressional mandate. Because the dollar amount differs each year, a revenue apportionment is required each year to determine the projected regulatory fee revenue to be collected from submarine cable providers and from terrestrial/satellite facilities.[33] Since FY 2009, the Commission has used the 87.4/12.6 percent allocation proposed in the Consensus Proposal as the percentage upon which to determine the regulatory fee revenue amounts for submarine cable providers and terrestrial/satellite facilities, respectively.[34] Each year, the Commission reserves the right to revise this 87.4/12.6 allocation. Although we will continue to review this allocation as part of our annual regulatory fee proceeding, we do not at this time find any basis to alter the 87.4/12.6 percent revenue allocation for 2011 regulatory fees.

4. Re-Assessment of Regulatory Fee Issues in a *Further Notice of Proposed Rulemaking*

29. Since 1994 when the first regulatory fees were collected, the communications industry has undergone a rapid transformation. The current basis of how regulatory fees are assessed, however, has changed only slightly since its inception in 1994.[35] In FY 2008, the Commission released a *FNPRM* which identified some of the issues raised by commenters with regard to the need for fundamental reform of our regulatory fee assessment methodology[36] From this rulemaking, the Commission has already acted on three of the issues: 1) a change in the bearer circuit methodology for calculating regulatory fees, 2) the elimination of two regulatory fee categories, the *International Public Fixed Radio* and *International High Frequency Broadcast Stations,* and 3) the conversion of UHF and VHF Television stations from analog to digital television. In our FY 2010 Regulatory Fees Report & Order, we stated that in a future proceeding, we will "further examine the nature and extent of all changes that need to be made to our regulatory fee schedule and calculations. In a separate and forthcoming action, we will call for comment on issues including, but not limited to, how changes in the telecommunications marketplace may warrant rebalancing of regulatory fees among existing service providers * * *"[37] As our commitment to this "forthcoming action", the Commission will by the end of 2011, initiate a further rulemaking that will update the record on regulatory fee rebalancing, as well as expand this inquiry to include new issues and services not covered by the 2008 *FNPRM,* such as whether and how to re-assess the regulatory fee burden of all fee categories, whether to incorporate 499–A wireless revenue in the calculation of ITSP regulatory fees, and whether to eliminate the regulatory fee portion (but not the application fee portion) of General Mobile Radio Service (GMRS).

C. Streamlined Regulatory Fee Payment Process

1. Cable Television Subscribers

30. We will continue to permit cable television operators to base their regulatory fee payment on their company's aggregate year-end subscriber count, rather than requiring them to report cable subscriber counts on a per community unit identifier ("CUID") basis.

[29] *See Assessment and Collection of Regulatory Fees for Fiscal Year 2005* and *Assessment* and *Collection of Regulatory Fees for Fiscal Year 2004,* MD Docket Nos. 05–59 and 04–73, Report and Order and Order on Reconsideration, 20 FCC Rcd 12259, 12264, paras. 38–44 (2005).

[30] *Id.*

[31] In the supporting documentation, the provider will need to state a reason for the change, such as a purchase or sale of a subsidiary, the date of the transaction, and any other pertinent information that will help to justify a reason for the change.

[32] *See, e.g.,* Federal Communications Commission, *Regulatory Fees Fact Sheet: What You Owe—Commercial Wireless Services for FY 2010* at 1 (released September 2010).

[33] *See Assessment and Collection of Regulatory Fees for Fiscal Year 2008,* Second Report and Order, 24 FCC Rcd 4208 at n. 35 (2009) ("*Submarine Cable Order*").

[34] *See Assessment and Collection of Regulatory Fees for Fiscal Year 2009,* Report and Order, 24 FCC Rcd 10301 at para. 8 (2009) ("*FY 2009 Report and Order*").

[35] 47 U.S.C. 159(a) and 159(b).

[36] *Assessment and Collection of Regulatory Fees for Fiscal Year 2008,* MD Docket No. 08–65, RM–11312, Report and Order and Further Notice of Proposed Rulemaking, 73 FR 50201 (August 26, 2008) at paras. 38–41.

[37] *See Assessment and Collection of Regulatory Fees for Fiscal Year 2010,* MD Docket No. 10–87, Report and Order, 25 FCC Rcd 9278 para. 31 (2010).

2. CMRS Cellular and Mobile Providers

31. In FY 2006, we streamlined the CMRS payment process by eliminating the requirement for CMRS providers to identify their individual call signs when making their regulatory fee payment, instead allowing CMRS providers to pay their regulatory fees only at the aggregate subscriber level without having to identify their various call signs.[38] We will continue this practice in FY 2011. In FY 2007, we consolidated the CMRS cellular and CMRS mobile fee categories into one fee category with a single fee code, thereby eliminating the requirement for CMRS providers to separate their subscriber counts into CMRS cellular and CMRS mobile fee categories during the regulatory fee payment process. This consolidation of fee categories enabled the Commission to process payments more quickly and accurately. For FY 2011, we will continue this practice of combining the CMRS cellular and CMRS mobile fee categories into one regulatory fee category.

3. Interstate Telecommunications Service Providers ("ITSP")

32. In FY 2007, we adopted a proposal to round lines 14 (total subject revenues) and 16 (total regulatory fee owed) on FCC Form 159–W to the nearest dollar. This revision enabled the Commission to process the ITSP regulatory fee payments more quickly because rounding was performed in a consistent manner and eliminated processing issues that occurred in prior years. In FY 2011, we will continue rounding lines 14 and 16 when calculating the FY 2011 ITSP fee obligation. In addition, we will continue the practice of not mailing out Form 159–W via surface mail.

D. Payment of Regulatory Fees

1. Lock Box Bank

33. All lock box payments to the Commission for FY 2011 will be processed by U.S. Bank, St. Louis, Missouri, and payable to the FCC. During the regulatory fee season, for those licensees paying by check, money order, or by credit card using Form 159–E remittance advice, the fee payment and Form 159–E remittance advice should be mailed to the following address: Federal Communications Commission, Regulatory Fees, P.O. Box 979084, St. Louis, MO 63197–9000. Additional payment options and instructions are posted at *http://www.fcc.gov/fees/regfees.html.*

2. Receiving Bank for Wire Payments

34. The receiving bank for all wire payments is the Federal Reserve Bank, New York, New York (TREAS NYC). When making a wire transfer, regulatees must fax a copy of their Fee Filer generated Form 159–E to U.S. Bank, St. Louis, Missouri at (314) 418–4232 at least one hour before initiating the wire transfer (but on the same business day), so as not to delay crediting their account. Regulatees should discuss arrangements (including bank closing schedules) with their bankers several days before they plan to make the wire transfer to allow sufficient time for the transfer to be initiated and completed before the deadline. Complete instructions for making wire payments are posted at *http://www.fcc.gov/fees/wiretran.html.*

3. De Minimis Regulatory Fees

35. Regulatees whose total FY 2011 regulatory fee liability, including all categories of fees for which payment is due, is less than $10 are exempted from payment of FY 2011 regulatory fees.

4. Standard Fee Calculations and Payment Dates

36. The Commission will accept fee payments made in advance of the window for the payment of regulatory fees. The responsibility for payment of fees by service category is as follows:

• *Media Services:* Regulatory fees must be paid for initial construction permits that were granted on or before October 1, 2010 for AM/FM radio stations, VHF/UHF full service television stations, and satellite television stations. Regulatory fees must be paid for all broadcast facility licenses granted on or before October 1, 2010. In instances where a permit or license is transferred or assigned after October 1, 2010, responsibility for payment rests with the holder of the permit or license as of the fee due date.

• *Wireline (Common Carrier) Services:* Regulatory fees must be paid for authorizations that were granted on or before October 1, 2010. In instances where a permit or license is transferred or assigned after October 1, 2010, responsibility for payment rests with the holder of the permit or license as of the fee due date. We note that audio bridging service providers are included in this category.[39]

• *Wireless Services:* CMRS cellular, mobile, and messaging services (fees based on number of subscribers or telephone number count): Regulatory fees must be paid for authorizations that were granted on or before October 1, 2010. The number of subscribers, units, or telephone numbers on December 31, 2010 will be used as the basis from which to calculate the fee payment. In instances where a permit or license is transferred or assigned after October 1, 2010, responsibility for payment rests with the holder of the permit or license as of the fee due date.

• The first eleven regulatory fee categories in our Schedule of Regulatory Fees (*see* Table—Schedule of Regulatory Fees) pay "small multi-year wireless regulatory fees." Entities pay these regulatory fees in advance for the entire amount of their five-year or ten-year term of initial license, and only pay regulatory fees again when the license is renewed or a new license is obtained. We include these fee categories in our Schedule of Regulatory Fees to publicize our estimates of the number of "small multi-year wireless" licenses that will be renewed or newly obtained in FY 2011.

• *Multichannel Video Programming Distributor Services (cable television operators and CARS licensees):* Regulatory fees must be paid for the number of basic cable television subscribers as of December 31, 2010.[40] Regulatory fees also must be paid for CARS licenses that were granted on or before October 1, 2010. In instances where a permit or license is transferred or assigned after October 1, 2010, responsibility for payment rests with the holder of the permit or license as of the fee due date.

• *International Services:* Regulatory fees must be paid for earth stations, geostationary orbit space stations and non-geostationary orbit satellite systems that were licensed and operational on or before October 1, 2010. In instances

[38] *See Assessment and Collection of Regulatory Fees for Fiscal Year 2006,* MD Docket No. 06–68, Report and Order, 21 FCC Rcd 8092, 8105, para. 48 (2006).

[39] Audio bridging services are toll teleconferencing services, and audio bridging service providers are required to contribute directly to the universal service fund based on revenues from these services. On June 30, 2008, the Commission released the *InterCall Order,* in which the Commission stated that InterCall, Inc. and all similarly situated audio bridging service providers are required to contribute directly to the universal service fund. *See Request for Review by InterCall, Inc. of Decision of Universal Service Administrator,* CC Docket No. 96–45, Order, 23 FCC Rcd 10731 (2008) ("*InterCall Order*").

[40] Cable television system operators should compute their basic subscribers as follows: Number of single family dwellings + number of individual households in multiple dwelling unit (apartments, condominiums, mobile home parks, *etc.*) paying at the basic subscriber rate + bulk rate customers + courtesy and free service. Note: Bulk-Rate Customers = Total annual bulk-rate charge divided by basic annual subscription rate for individual households. Operators may base their count on "a typical day in the last full week" of December 2010, rather than on a count as of December 31, 2010.

where a permit or license is transferred or assigned after October 1, 2010, responsibility for payment rests with the holder of the permit or license as of the fee due date.

• *International Services: Submarine Cable Systems:* Regulatory fees for submarine cable systems are to be paid on a per cable landing license basis based on circuit capacity as of December 31, 2010. In instances where a license is transferred or assigned after October 1, 2010, responsibility for payment rests with the holder of the license as of the fee due date. For regulatory fee purposes, the allocation in FY 2011 will remain at 87.6 percent for submarine cable and 12.4 percent for satellite/terrestrial facilities.

• *International Services: Terestrial and Satellite Services:* Finally, regulatory fees for International Bearer Circuits are to be paid by facilities-based common carriers that have active (used or leased) international bearer circuits as of December 31, 2010 in any terrestrial or satellite transmission facility for the provision of service to an end user or resale carrier, which includes active circuits to themselves or to their affiliates. In addition, non-common carrier satellite operators must pay a fee for each circuit sold or leased to any customer, including themselves or their affiliates, other than an international common carrier authorized by the Commission to provide U.S. international common carrier services. "Active circuits" for these purposes include backup and redundant circuits as of December 31, 2010. Whether circuits are used specifically for voice or data is not relevant for these purposes in determining that they are active circuits. In instances where a permit or license is transferred or assigned after October 1, 2010, responsibility for payment rests with the holder of the permit or license as of the fee due date. For regulatory fee purposes, the allocation in FY 2011 will remain at 87.6 percent for submarine cable and 12.4 percent for satellite/terrestrial facilities.

E. Enforcement

37. To be considered timely, regulatory fee payments must be received and stamped at the lockbox bank by the last day of the regulatory fee filing window. Section 9(c) of the Act requires us to impose a late payment penalty of 25 percent of the unpaid amount to be assessed on the first day following the deadline date for filing of these fees.[41] Failure to pay regulatory fees and/or any late penalty will subject regulatees to sanctions, including those set forth in section 1.1910 of the Commission's rules [42] and in the Debt Collection Improvement Act of 1996 ("DCIA").[43] We also assess administrative processing charges on delinquent debts to recover additional costs incurred in processing and handling the related debt pursuant to the DCIA and section 1.1940(d) of the Commission's rules.[44] These administrative processing charges will be assessed on any delinquent regulatory fee, in addition to the 25 percent late charge penalty. In case of partial payments (underpayments) of regulatory fees, the licensee will be given credit for the amount paid, but if it is later determined that the fee paid is incorrect or not timely paid, then the 25 percent late charge penalty (and other charges and/or sanctions, as appropriate) will be assessed on the portion that is not paid in a timely manner.

38. We will withhold action on any applications or other requests for benefits filed by anyone who is delinquent in any non-tax debts owed to the Commission (including regulatory fees) and will ultimately dismiss those applications or other requests if payment of the delinquent debt or other satisfactory arrangement for payment is not made.[45] Failure to pay regulatory fees can also result in the initiation of a proceeding to revoke any and all authorizations held by the entity responsible for paying the delinquent fee(s).

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[41] 47 U.S.C. 159(c).

[42] *See* 47 CFR 1.1910.

[43] Delinquent debt owed to the Commission triggers application of the "red light rule" which requires offsets or holds on pending disbursements. 47 CFR 1.1910. In 2004, the Commission adopted rules implementing the requirements of the DCIA. *See Amendment of Parts 0 and 1 of the Commission's Rules,* MD Docket No. 02–339, Report and Order, 19 FCC Rcd 6540 (2004); 47 CFR Part 1, Subpart O, Collection of Claims Owed the United States.

[44] 47 CFR 1.1940(d).

[45] *See* 47 CFR 1.1161(c), 1.1164(f)(5), and 1.1910.

TABLE – Reference to FY 2010 Schedule of Regulatory Fees

Regulatory fees for the categories shaded in gray are collected by the Commission in advance to cover the term of the license and are submitted along with the application at the time the application is filed.

Fee Category	Annual Regulatory Fee (U.S. $'s)
PLMRS (per license) (Exclusive Use) (47 CFR part 90)	40
Microwave (per license) (47 CFR part 101)	25
218-219 MHz (Formerly Interactive Video Data Service) (per license) (47 CFR part 95)	65
Marine (Ship) (per station) (47 CFR part 80)	10
Marine (Coast) (per license) (47 CFR part 80)	45
General Mobile Radio Service (per license) (47 CFR part 95)	5
Rural Radio (47 CFR part 22) (previously listed under the Land Mobile category)	20
PLMRS (Shared Use) (per license) (47 CFR part 90)	20
Aviation (Aircraft) (per station) (47 CFR part 87)	5
Aviation (Ground) (per license) (47 CFR part 87)	10
Amateur Vanity Call Signs (per call sign) (47 CFR part 97)	1.33
CMRS Mobile/Cellular Services (per unit) (47 CFR parts 20, 22, 24, 27, 80 and 90)	.18
CMRS Messaging Services (per unit) (47 CFR parts 20, 22, 24 and 90)	.08
Broadband Radio Service (formerly MMDS/ MDS) (per license) (47 CFR part 21)	310
Local Multipoint Distribution Service (per call sign) (47 CFR, part 101)	310
AM Radio Construction Permits	390
FM Radio Construction Permits	675
TV (47 CFR part 73) VHF Commercial	
Markets 1-10	81,550
Markets 11-25	63,275
Markets 26-50	42,550
Markets 51-100	23,750

Fee Category	Annual Regulatory Fee (U.S. $'s)
Remaining Markets	6,125
Construction Permits	6,125
TV (47 CFR part 73) UHF Commercial	
Markets 1-10	32,275
Markets 11-25	30,075
Markets 26-50	18,900
Markets 51-100	11,550
Remaining Markets	3,050
Construction Permits	3,050
Satellite Television Stations (All Markets)	1,300
Construction Permits – Satellite Television Stations	675
Low Power TV, Class A TV, TV/FM Translators & Boosters (47 CFR part 74)	415
Broadcast Auxiliaries (47 CFR part 74)	10
CARS (47 CFR part 78)	315
Cable Television Systems (per subscriber) (47 CFR part 76)	.89
Interstate Telecommunication Service Providers (per revenue dollar)	.00349
Earth Stations (47 CFR part 25)	240
Space Stations (per operational station in geostationary orbit) (47 CFR part 25) also includes DBS Service (per operational station) (47 CFR part 100)	127,925
Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25)	138,050
International Bearer Circuits - Terrestrial/Satellites (per 64KB circuit)	.39
International Bearer Circuits - Submarine Cable	See Table Below

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TABLE—REFERENCE TO FY 2010 SCHEDULE OF REGULATORY FEES

FY 2010 radio station regulatory fees						
Population served	AM Class A	AM Class B	AM Class C	AM Class D	FM Classes A, B1 & C3	FM Classes B, C, C0, C1 & C2
≤25,000	$675	$550	$500	$575	$650	$825
25,001–75,000	1,350	1,075	750	875	1,325	1,450
75,001–150,000	2,025	1,350	1,000	1,450	1,825	2,725
150,001–500,000	3,050	2,300	1,500	1,725	2,800	3,550
500,001–1,200,000	4,400	3,500	2,500	2,875	4,450	5,225
1,200,001–3,000,000	6,750	5,400	3,750	4,600	7,250	8,350
>3,000,000	8,100	6,475	4,750	5,750	9,250	10,850

TABLE—REFERENCE TO FY 2010 SCHEDULE OF REGULATORY FEES

[International Bearer Circuits—Submarine Cable]

Submarine cable systems (capacity as of December 31, 2009)	Fee amount	Address
< 2.5 Gbps	$14,625	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.
2.5 Gbps or greater, but less than 5 Gbps	29,250	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.
5 Gbps or greater, but less than 10 Gbps	58,500	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.
10 Gbps or greater, but less than 20 Gbps	116,975	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.
20 Gbps or greater	233,950	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.

Initial Regulatory Flexibility Analysis

39. As required by the Regulatory Flexibility Act ("RFA"),[46] the Commission prepared this Initial Regulatory Flexibility Analysis ("IRFA") of the possible significant economic impact on small entities by the policies and rules proposed in this *NPRM.* Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed on or before the dates indicated on the first page of this *NPRM.* The Commission will send a copy of the Notice, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.[47] In addition, the Notice and IRFA (or summaries thereof) will be published in the **Federal Register**.[48]

A. Need for, and Objectives of, the Notice

40. This rulemaking proceeding was initiated for the Commission to obtain comments regarding its proposed amendment to its Schedule of Regulatory Fees in the amount of $335,794,000, which is the amount that Congress has required the Commission to recover. The Commission seeks to collect the necessary amount through its revised Schedule of Regulatory Fees in the most efficient manner possible and without undue public burden.

B. Legal Basis

41. This action, including publication of proposed rules, is authorized under Sections (4)(i) and (j), 9, and 303(r) of the Communications Act of 1934, as amended.[49]

C. Description and Estimate of the Number of Small Entities To Which the Rules Will Apply

42. 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 and policies, if adopted.[50] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[51] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[52] 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.[53]

43. *Small Businesses.* Nationwide, there are a total of approximately 29.6 million small businesses, according to the SBA.[54]

44. *Small Organizations.* Nationwide, as of 2002, there are approximately 1.6 million small organizations.[55] A "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."[56]

45. *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."[57] Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States.[58] We estimate that, of this total, 84,377 entities were "small governmental jurisdictions."[59] Thus, we estimate that most governmental jurisdictions are small.

46. We have included small incumbent local exchange carriers in this present RFA analysis. As noted above, a "small business" under the RFA is one that, inter alia, meets the pertinent small business size standard (*e.g.,* a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation."[60] The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not "national" in scope.[61] We have therefore included small incumbent local exchange carriers in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

47. *Incumbent Local Exchange Carriers ("ILECs").* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local

[46] 5 U.S.C. 603. The RFA, 5 U.S.C. 601–612 has been amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) ("CWAAA"). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA").

[47] 5 U.S.C. 603(a).

[48] *Id.*

[49] 47 U.S.C. 154(i) and (j), 159, and 303(r).

[50] 5 U.S.C. 603(b)(3).

[51] 5 U.S.C. 601(6).

[52] 5 U.S.C. 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

[53] 15 U.S.C. 632.

[54] *See* SBA, Office of Advocacy, "Frequently Asked Questions," *http://web.sba.gov/faqs* (accessed Jan. 2009).

[55] Independent Sector, The New Nonprofit Almanac & Desk Reference (2002).

[56] 5 U.S.C. 601(4).

[57] 5 U.S.C. 601(5).

[58] U.S. Census Bureau, Statistical Abstract of the United States: 2006, Section 8, p. 272, Table 415.

[59] We assume that the villages, school districts, and special districts are small, and total 48,558. *See* U.S. Census Bureau, Statistical Abstract of the United States: 2006, Section 8, p. 273, Table 417. For 2002, Census Bureau data indicate that the total number of county, municipal, and township governments nationwide was 38,967, of which 35,819 were small. *Id.*

[60] 15 U.S.C. 632.

[61] Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of "small-business concern," which the RFA incorporates into its own definition of "small business." *See* 15 U.S.C. 632(a) ("Small Business Act"); 5 U.S.C. 601(3) ("RFA"). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. *See* 13 CFR 121.102(b).

exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[62] According to Commission data,[63] 1,311 carriers have reported that they are engaged in the provision of incumbent local exchange services. Of these 1,311 carriers, an estimated 1,024 have 1,500 or fewer employees and 287 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our action.

48. Competitive Local Exchange Carriers ("CLECs"), Competitive Access Providers ("CAPs"), "Shared-Tenant Service Providers," and "Other Local Service Providers." Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[64] According to Commission data,[65] 1,005 carriers have reported that they are engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 1,005 carriers, an estimated 918 have 1,500 or fewer employees and 87 have more than 1,500 employees. In addition, 16 carriers have reported that they are "Shared-Tenant Service Providers," and all 16 are estimated to have 1,500 or fewer employees. In addition, 89 carriers have reported that they are "Other Local Service Providers." Of the 89, all have 1,500 or fewer employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, "Shared-Tenant Service Providers," and "Other Local Service Providers" are small entities that may be affected by our action.

49. *Local Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[66] According to Commission data,[67] 151 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 149 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by our action.

50. *Toll Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[68] According to Commission data,[69] 815 carriers have reported that they are engaged in the provision of toll resale services. Of these, an estimated 787 have 1,500 or fewer employees and 28 have more than 1,500 employees. Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by our action.

51. *Payphone Service Providers ("PSPs").* Neither the Commission nor the SBA has developed a small business size standard specifically for payphone services providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[70] According to Commission data,[71] 526 carriers have reported that they are engaged in the provision of payphone services. Of these, an estimated 524 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of payphone service providers are small entities that may be affected by our action.

52. *Interexchange Carriers ("IXCs").* Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[72] According to Commission data,[73] 300 carriers have reported that they are engaged in the provision of interexchange service. Of these, an estimated 268 have 1,500 or fewer employees and 32 have more than 1,500 employees. Consequently, the Commission estimates that the majority of IXCs are small entities that may be affected by our action.

53. *Operator Service Providers ("OSPs").* Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[74] According to Commission data,[75] 28 carriers have reported that they are engaged in the provision of operator services. Of these, an estimated 27 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that the majority of OSPs are small entities that may be affected by our action.

54. *Prepaid Calling Card Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[76] According to Commission data,[77] 88 carriers have reported that they are engaged in the provision of prepaid calling cards. Of these, an estimated 85 have 1,500 or fewer employees and three have more than 1,500 employees. Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by our action.

55. *800 and 800-Like Service Subscribers.*[78] Neither the Commission nor the SBA has developed a small business size standard specifically for 800 and 800-like service ("toll free") subscribers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[79] The most reliable source of information regarding the number of these service subscribers appears to be data the Commission receives from Database Service Management on the 800, 866, 877, and 888 numbers in

[62] 13 CFR 121.201, North American Industry Classification System (NAICS) code 517110.

[63] FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, "*Trends in Telephone Service*" at Table 5.3, Page 5–5 (Aug. 2008) ("*Trends in Telephone Service*"). This source uses data that are current as of November 1, 2006.

[64] 13 CFR 121.201, NAICS code 517110.

[65] "Trends in Telephone Service" at Table 5.3.

[66] 13 CFR 121.201, NAICS code 517310.

[67] "Trends in Telephone Service" at Table 5.3.

[68] 13 CFR 121.201, NAICS code 517310.

[69] "Trends in Telephone Service" at Table 5.3.

[70] 3 CFR 121.201, NAICS code 517110.

[71] "Trends in Telephone Service" at Table 5.3.

[72] 13 CFR 121.201, NAICS code 517110.

[73] "Trends in Telephone Service" at Table 5.3.

[74] 13 CFR 121.201, NAICS code 517110.

[75] "Trends in Telephone Service" at Table 5.3.

[76] 13 CFR 121.201, NAICS code 517310.

[77] "Trends in Telephone Service" at Table 5.3.

[78] We include all toll-free number subscribers in this category.

[79] 13 CFR 121.201, NAICS code 517310.

use.[80] According to our data, at the end of December 2007, the number of 800 numbers assigned was 7,860,000; the number of 888 numbers assigned was 5,210,184; the number of 877 numbers assigned was 4,388,682; and the number of 866 numbers assigned was 7,029,116. We do not have data specifying the number of these subscribers that are independently owned and operated or have 1,500 or fewer employees, and thus are unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small businesses under the SBA size standard. Consequently, we estimate that there are 7,860,000 or fewer small entity 800 subscribers; 5,210,184 or fewer small entity 888 subscribers; 4,388,682 or fewer small entity 877 subscribers, and 7,029,116 or fewer entity 866 subscribers.

56. *Satellite Telecommunications and All Other Telecommunications.* These two economic census categories address the satellite industry. The first category has a small business size standard of $15 million or less in average annual receipts, under SBA rules.[81] The second has a size standard of $25 million or less in annual receipts.[82] The most current Census Bureau data in this context, however, are from the (last) economic census of 2002, and we will use those figures to gauge the prevalence of small businesses in these categories.[83]

57. The category of Satellite Telecommunications "comprises establishments primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications."[84] For this category, Census Bureau data for 2002 show that there were a total of 371 firms that operated for the entire year.[85] Of this total, 307 firms had annual receipts of under $10 million, and 26 firms had receipts of $10 million to $24,999,999.[86] Consequently, we estimate that the majority of Satellite Telecommunications firms are small entities that might be affected by our action.

58. The second category of All Other Telecommunications comprises, *inter alia,* "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."[87] For this category, Census Bureau data for 2002 show that there were a total of 332 firms that operated for the entire year.[88] Of this total, 303 firms had annual receipts of under $10 million and 15 firms had annual receipts of $10 million to $24,999,999.[89] Consequently, we estimate that the majority of All Other Telecommunications firms are small entities that might be affected by our action.

59. *Wireless Telecommunications Carriers (except Satellite).* Since 2007, the Census Bureau has placed wireless firms within this new, broad, economic census category.[90] Prior to that time, such firms were within the now-superseded categories of "Paging" and "Cellular and Other Wireless Telecommunications."[91] Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees.[92] Because Census Bureau data are not yet available for the new category, we will estimate small business prevalence using the prior categories and associated data. For the category of Paging, data for 2002 show that there were 807 firms that operated for the entire year.[93] Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more.[94] For the category of Cellular and Other Wireless Telecommunications, data for 2002 show that there were 1,397 firms that operated for the entire year.[95] Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.[96] Thus, we estimate that the majority of wireless firms are small.

60. *Auctions.* Initially, we note that, as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated.

61. *Common Carrier Paging.* As noted, the SBA has developed a small business size standard for Wireless Telecommunications Carriers (except Satellite) firms within the broad economic census categories of "Cellular and Other Wireless Telecommunications."[97] Since 2007, the Census Bureau has placed wireless firms within this new, broad, economic census category.[98] Prior to that time, such firms were within the now-superseded categories of "Paging" and "Cellular and Other Wireless Telecommunications."[99] Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer

[80] "Trends in Telephone Service" at Tables 18.4, 18.5, 18.6, and 18.7.

[81] 13 CFR 121.201, NAICS code 517410.

[82] 13 CFR 121.201, NAICS code 517919.

[83] 13 CFR 121.201, NAICS codes 517410 and 517910 (2002).

[84] U.S. Census Bureau, 2007 NAICS Definitions, "517410 Satellite Telecommunications"; *http://www.census.gov/naics/2007/def/ND517410.HTM.*

[85] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 4, NAICS code 517410 (issued Nov. 2005).

[86] *Id.* An additional 38 firms had annual receipts of $25 million or more.

[87] U.S. Census Bureau, 2007 NAICS Definitions, "517919 All Other Telecommunications"; *http://www.census.gov/naics/2007/def/ND517919.HTM#N517919.*

[88] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 4, NAICS code 517910 (issued Nov. 2005).

[89] *Id.* An additional 14 firms had annual receipts of $25 million or more.

[90] U.S. Census Bureau, 2007 NAICS Definitions, "517210 Wireless Telecommunications Categories (Except Satellite)"; *http://www.census.gov/naics/2007/def/ND517210.HTM#N517210.*

[91] U.S. Census Bureau, 2002 NAICS Definitions, "517211 Paging"; *http://www.census.gov/epcd/naics02/def/NDEF517.HTM.;* U.S. Census Bureau, 2002 NAICS Definitions, "517212 Cellular and Other Wireless Telecommunications"; *http://www.census.gov/epcd/naics02/def/NDEF517.HTM.*

[92] 13 CFR 121.201, NAICS code 517210 (2007 NAICS). The now-superseded, pre-2007 CFR citations were 13 CFR 121.201, NAICS codes 517211 and 517212 (referring to the 2002 NAICS).

[93] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization," Table 5, NAICS code 517211 (issued Nov. 2005).

[94] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with "1000 employees or more."

[95] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization," Table 5, NAICS code 517212 (issued Nov. 2005).

[96] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with "1000 employees or more."

[97] 13 CFR 121.201, NAICS code 517212.

[98] U.S. Census Bureau, 2007 NAICS Definitions, "517210 Wireless Telecommunications Categories (Except Satellite)"; *http://www.census.gov/naics/2007/def/ND517210.HTM#N517210.*

[99] U.S. Census Bureau, 2002 NAICS Definitions, "517211 Paging"; *http://www.census.gov/epcd/naics02/def/NDEF517.HTM.;* U.S. Census Bureau, 2002 NAICS Definitions, "517212 Cellular and Other Wireless Telecommunications"; *http://www.census.gov/epcd/naics02/def/NDEF517.HTM.*

employees.[100] Because Census Bureau data are not yet available for the new category, we will estimate small business prevalence using the prior categories and associated data. For the category of Paging, data for 2002 show that there were 807 firms that operated for the entire year.[101] Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more.[102] For the category of Cellular and Other Wireless Telecommunications, data for 2002 show that there were 1,397 firms that operated for the entire year.[103] Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.[104] Thus, we estimate that the majority of wireless firms are small.

62. In addition, in the *Paging Second Report and Order,* the Commission adopted a size standard for "small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[105] A small business is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years.[106] The SBA has approved this definition.[107] An initial auction of Metropolitan Economic Area ("MEA") licenses was conducted in the year 2000. Of the 2,499 licenses auctioned, 985 were sold.[108] Fifty-seven companies claiming small business status won 440 licenses.[109] A subsequent auction of MEA and Economic Area ("EA") licenses was held in the year 2001. Of the 15,514 licenses auctioned, 5,323 were sold.[110] One hundred thirty-two companies claiming small business status purchased 3,724 licenses. A third auction, consisting of 8,874 licenses in each of 175 EAs and 1,328 licenses in all but three of the 51 MEAs, was held in 2003. Seventy-seven bidders claiming small or very small business status won 2,093 licenses.[111]

63. Currently, there are approximately 74,000 Common Carrier Paging licenses. According to the most recent *Trends in Telephone Service,* 281 carriers reported that they were engaged in the provision of "paging and messaging" services.[112] Of these, an estimated 279 have 1,500 or fewer employees and two have more than 1,500 employees.[113] We estimate that the majority of common carrier paging providers would qualify as small entities under the SBA definition.

64. *2.3 GHz 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.[114] The SBA has approved these definitions.[115] The Commission auctioned geographic area licenses in the WCS service. In the auction, which was conducted in 1997, there were seven bidders that won 31 licenses that qualified as very small business entities, and one bidder that won one license that qualified as a small business entity.

65. *1670–1675 MHz Services.* An auction for one license in the 1670–1675 MHz band was conducted in 2003. One license was awarded. The winning bidder was not a small entity.

66. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. As noted, the SBA has developed a small business size standard for Wireless Telecommunications Carriers (except Satellite).[116] Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees.[117] According to *Trends in Telephone Service* data, 434 carriers reported that they were engaged in wireless telephony.[118] Of these, an estimated 222 have 1,500 or fewer employees and 212 have more than 1,500 employees.[119] We have estimated that 222 of these are small under the SBA small business size standard.

67. *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 has created a small business size standard for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years.[120] For Block F, 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.[121] These small business size standards, in the context of broadband PCS auctions, have been approved by the SBA.[122] 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 qualified as small entities in the Block C auctions. A total of 93 "small" and "very small" business bidders won approximately 40 percent of the 1,479

[100] 13 CFR 121.201, NAICS code 517210 (2007 NAICS). The now-superseded, pre-2007 CFR citations were 13 CFR 121.201, NAICS codes 517211 and 517212 (referring to the 2002 NAICS).

[101] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization," Table 5, NAICS code 517211 (issued Nov. 2005).

[102] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with "1000 employees or more."

[103] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization," Table 5, NAICS code 517212 (issued Nov. 2005).

[104] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with "1000 employees or more."

[105] *Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems,* Second Report and Order, 12 FCC Rcd 2732, 2811–2812, paras. 178–181 ("*Paging Second Report and Order*"); *see also Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems,* Memorandum Opinion and Order on Reconsideration, 14 FCC Rcd 10030, 10085–10088, paras. 98–107 (1999).

[106] *Paging Second Report and Order,* 12 FCC Rcd at 2811, para. 179.

[107] *See* Letter from Aida Alvarez, Administrator, SBA, to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau ("WTB"), FCC (Dec. 2, 1998) ("*Alvarez Letter 1998*").

[108] *See* "*929 and 931 MHz Paging Auction Closes,*" Public Notice, 15 FCC Rcd 4858 (WTB 2000).

[109] *See id.*

[110] *See* "*Lower and Upper Paging Band Auction Closes,*" Public Notice, 16 FCC Rcd 21821 (WTB 2002).

[111] *See* "*Lower and Upper Paging Bands Auction Closes,*" Public Notice, 18 FCC Rcd 11154 (WTB 2003). The current number of small or very small business entities that hold wireless licenses may differ significantly from the number of such entities that won in spectrum auctions due to assignments and transfers of licenses in the secondary market over time. In addition, some of the same small business entities may have won licenses in more than one auction.

[112] "Trends in Telephone Service" at Table 5.3.

[113] *Id.*

[114] *Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service (WCS),* Report and Order, 12 FCC Rcd 10785, 10879, para. 194 (1997).

[115] *See Alvarez Letter 1998.*

[116] 13 CFR 121.201, NAICS code 517210.

[117] *Id.*

[118] "Trends in Telephone Service" at Table 5.3.

[119] "Trends in Telephone Service" at Table 5.3.

[120] *See Amendment of Parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap,* Report and Order, 11 FCC Rcd 7824, 7850–7852, paras. 57–60 (1996) ("*PCS Report and Order*"); *see also* 47 CFR 24.720(b).

[121] *See PCS Report and Order,* 11 FCC Rcd at 7852, para. 60.

[122] *See Alvarez Letter 1998.*

licenses for Blocks D, E, and F.[123] In 1999, the Commission reauctioned 155 C, D, E, and F Block licenses; there were 113 small business winning bidders.[124]

68. In 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction 35. Of the 35 winning bidders in this auction, 29 qualified as "small" or "very small" businesses.[125] Subsequent events, concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant. In 2005, the Commission completed an auction of 188 C block licenses and 21 F block licenses in Auction 58. There were 24 winning bidders for 217 licenses.[126] Of the 24 winning bidders, 16 claimed small business status and won 156 licenses. In 2007, the Commission completed an auction of 33 licenses in the A, C, and F Blocks in Auction 71.[127] Of the 14 winning bidders, six were designated entities.[128] In 2008, the Commission completed an auction of 20 Broadband PCS licenses in the C, D, E and F block licenses in Auction 78.[129]

69. *Advanced Wireless Services.* In 2006, the Commission conducted its first auction of Advanced Wireless Services licenses in the 1710–1755 MHz and 2110–2155 MHz bands ("AWS–1"), designated as Auction 66.[130] The Commission defined "small business" as an entity with attributed average annual gross revenues that exceeded $15 million and did not exceed $40 million for the preceding three years.[131] A small business received a 15 percent discount on its winning bid.[132] A "very small business" is defined as an entity with attributed average annual gross revenues that did not exceed $15 million for the preceding three years.[133] A very small business received a 25 percent discount on its winning bid.[134] In Auction 66, thirty-one winning bidders identified themselves as very small businesses and won 142 licenses.[135] Twenty-six of the winning bidders identified themselves as small businesses and won 73 licenses.[136] In 2008, the Commission conducted an auction of AWS–1 licenses, designated as Auction 78, which offered 35 licenses for which there were no winning bids in Auction 66.[137] Four winning bidders that identified themselves as very small businesses won 17 AWS–1 licenses.[138] Three of the winning bidders that identified themselves as a small business won five AWS–1 licenses.

70. *Narrowband Personal Communications Services.* In 1994, the Commission conducted an auction for Narrowband PCS licenses. A second auction was also conducted later in 1994. For purposes of the first two Narrowband PCS auctions, "small businesses" were entities with average gross revenues for the prior three calendar years of $40 million or less.[139] Through these auctions, the Commission awarded a total of 41 licenses, 11 of which were obtained by four small businesses.[140] To ensure meaningful participation by small business entities in future auctions, the Commission adopted a two-tiered small business size standard in the Narrowband PCS Second Report and Order.[141] A "small business" is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $40 million.[142] A "very small business" is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million.[143] The SBA has approved these small business size standards.[144] A third auction was conducted in 2001. Here, five bidders won 317 (Metropolitan Trading Areas and nationwide) licenses.[145] Three of these claimed status as a small or very small entity and won 311 licenses.

71. *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.[146] 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.[147] 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.[148] Additionally, the lower 700 MHz Service had a third category of small business status for Metropolitan/Rural Service Area ("MSA/RSA") licenses. The third category is "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.[149] The SBA approved these small size standards.[150] The Commission conducted an auction in 2002 of 740 licenses (one license in each of the 734 MSAs/RSAs and one license in each of

[123] FCC News, "Broadband PCS, D, E and F Block Auction Closes," No. 71744 (rel. Jan. 14, 1997).

[124] *See* "C, D, E, and F Block Broadband PCS Auction Closes," *Public Notice,* 14 FCC Rcd 6688 (WTB 1999).

[125] *See* "C and F Block Broadband PCS Auction Closes; Winning Bidders Announced," *Public Notice,* 16 FCC Rcd 2339 (2001).

[126] *See* "Broadband PCS Spectrum Auction Closes; Winning Bidders Announced for Auction No. 58," *Public Notice,* 20 FCC Rcd 3703 (2005).

[127] *See* "Auction of Broadband PCS Spectrum Licenses Closes; Winning Bidders Announced for Auction No. 71," *Public Notice,* 22 FCC Rcd 9247 (2007).

[128] *Id.*

[129] *See* Auction of AWS–1 and Broadband PCS Licenses Rescheduled For August 13, 2008, Notice of Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures For Auction 78, *Public Notice,* 23 FCC Rcd 7496 (2008) ("*AWS–1 and Broadband PCS Procedures Public Notice*").

[130] *See* Auction of Advanced Wireless Services Licenses Scheduled for June 29, 2006; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures for Auction No. 66, AU Docket No. 06–30, *Public Notice,* 21 FCC Rcd 4562 (2006) ("*Auction 66 Procedures Public Notice*");

[131] 47 CFR 27.1102(a)(1).

[132] *See* 47 CFR 1.2110(f)(2).

[133] 47 CFR 27.1102(a)(2)

[134] *See* 47 CFR 1.2110(f)(2).

[135] *See* Auction of Advanced Wireless Services Licenses Closes; Winning Bidders Announced for Auction No. 66, *Public Notice,* 21 FCC Rcd 10,521 (2006) ("*Auction 66 Closing Public Notice*")

[136] *See id.*

[137] *See* AWS–1 and Broadband PCS Procedures Public Notice, 23 FCC Rcd 7496. Auction 78 also included an auction of Broadband PCS licenses.

[138] *See* "Auction of AWS–1 and Broadband PCS Licenses Closes, Winning Bidders Announced for Auction 78, Down Payments Due September 9, 2008, FCC Forms 601 and 602 Due September 9, 2008, Final Payments Due September 23, 2008, Ten-Day Petition to Deny Period", *Public Notice,* 23 FCC Rcd 12749–65 (2008).

[139] *Implementation of Section 309(j) of the Communications Act—Competitive Bidding Narrowband PCS,* Third Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 10 FCC Rcd 175, 196, para. 46 (1994).

[140] *See* "Announcing the High Bidders in the Auction of ten Nationwide Narrowband PCS Licenses, Winning Bids Total $617,006,674," *Public Notice,* PNWL 94–004 (released Aug. 2, 1994); "Announcing the High Bidders in the Auction of 30 Regional Narrowband PCS Licenses; Winning Bids Total $490,901,787," *Public Notice,* PNWL 94–27 (released Nov. 9, 1994).

[141] *Amendment of the Commission's Rules to Establish New Personal Communications Services,* Narrowband PCS, Second Report and Order and Second Further Notice of Proposed Rule Making, 15 FCC Rcd 10456, 10476, para. 40 (2000) ("*Narrowband PCS Second Report and Order*").

[142] *Narrowband PCS Second Report and Order,* 15 FCC Rcd at 10476, para. 40.

[143] *Id.*

[144] *See Alvarez Letter 1998.*

[145] *See* "Narrowband PCS Auction Closes," *Public Notice,* 16 FCC Rcd 18663 (WTB 2001).

[146] *See Reallocation and Service Rules for the 698–746 MHz Spectrum Band (Television Channels 52–59),* Report and Order, 17 FCC Rcd 1022 (2002) ("*Channels 52–59 Report and Order*").

[147] *See Channels 52–59 Report and Order,* 17 FCC Rcd at 1087–88, para. 172.

[148] *See id.*

[149] *See id,* 17 FCC Rcd at 1088, para. 173.

[150] *See* Letter from Aida Alvarez, Administrator, SBA, to Thomas Sugrue, Chief, WTB, FCC (Aug. 10, 1999) ("*Alvarez Letter 1999*").

the six Economic Area Groupings (EAGs)). Of the 740 licenses available for auction, 484 licenses were sold to 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business or entrepreneur status and won a total of 329 licenses.[151] The Commission conducted a second auction in 2003 that included 256 licenses: 5 EAG licenses and 476 Cellular Market Area licenses.[152] Seventeen winning bidders claimed small or very small business status and won 60 licenses, and nine winning bidders claimed entrepreneur status and won 154 licenses.[153] In 2005, the Commission completed an auction of 5 licenses in the lower 700 MHz band (Auction 60). There were three winning bidders for five licenses. All three winning bidders claimed small business status.

72. In 2007, the Commission adopted the *700 MHz Second Report and Order*.[154] The *Order* revised the band plan for the commercial (including Guard Band) and public safety spectrum, adopted services rules, including stringent build-out requirements, an open platform requirement on the C Block, and a requirement on the D Block licensee to construct and operate a nationwide, interoperable wireless broadband network for public safety users. In 2008, the Commission conducted Auction 73 which offered all available, commercial 700 MHz Band licenses (1,099 licenses) for bidding using the Commission's standard simultaneous multiple-round ("SMR") auction format for the A, B, D, and E block licenses and an SMR auction design with hierarchical package bidding ("HPB") for the C Block licenses. A bidder with attributed average annual gross revenues that did not exceed $15 million for the preceding three years (very small business) qualified for a 25 percent discount on its winning bids. A bidder with attributed average annual gross revenues that exceeded $15 million, but did not exceed $40 million for the preceding three years, qualified for a 15 percent discount on its winning bids. At the conclusion of Auction 73, there were 36 winning bidders (who won 330 of the 1,090 licenses won) that identified themselves as very small businesses.[155] There were 20 winning bidders that identified themselves as a small business that won 49 of the 1,090 licenses won.[156] The provisionally winning bids for the A, B, C, and E Block licenses exceeded the aggregate reserve prices for those blocks. However, the provisionally winning bid for the D Block license did not meet the applicable reserve price and thus did not become a winning bid.[157]

73. *700 MHz Guard Band Licenses.* 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.[158] 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.[159] 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.[160] SBA approval of these definitions is not required.[161] In 2000, the Commission conducted an auction of 52 Major Economic Area ("MEA") licenses.[162] Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of eight 700 MHz Guard Band licenses commenced and closed in 2001. Of the three winning bidders, one was a small business that won two of the eight licenses.[163]

74. *Specialized Mobile Radio.* The Commission awards small business bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to entities that had revenues of no more than $15 million in each of the three previous calendar years.[164] The Commission awards very small business bidding credits to entities that had revenues of no more than $3 million in each of the three previous calendar years.[165] The SBA has approved these small business size standards for the 800 MHz and 900 MHz SMR Service.[166] The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction was completed in 1996. Sixty bidders claiming that they qualified as small businesses under the $15 million size standard won 263 geographic area licenses in the 900 MHz SMR band. The 800 MHz SMR auction for the upper 200 channels was conducted in 1997. Ten bidders claiming that they qualified as small businesses under the $15 million size standard won 38 geographic area licenses for the upper 200 channels in the 800 MHz SMR band.[167] A second auction for the 800 MHz band was conducted in 2002 and included 23 BEA licenses. One bidder claiming small business status won five licenses.[168]

75. The auction of the 1,053 800 MHz SMR geographic area licenses for the General Category channels was conducted in 2000. Eleven bidders won 108 geographic area licenses for the General Category channels in the 800 MHz SMR band qualified as small businesses under the $15 million size standard.[169] In an auction completed in

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[151] *See* "Lower 700 MHz Band Auction Closes," *Public Notice,* 17 FCC Rcd 17272 (WTB 2002).

[152] *See* "Lower 700 MHz Band Auction Closes," *Public Notice,* 18 FCC Rcd 11873 (WTB 2003).

[153] *See id.*

[154] Service Rules for the 698–746, 747–762 and 777–792 MHz Band, WT Docket No. 06–150, *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems,* CC Docket No. 94–102, *Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephone,* WT Docket No. 01–309, *Biennial Regulatory Review—Amendment of Parts 1, 22, 24, 27, and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services,* WT Docket No. 03–264, *Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission's Rules,* WT Docket No. 06–169, *Implementing a Nationwide, Broadband Interoperable Public Safety Network in the 700 MHz Band,* PS Docket No. 06–229, *Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State, and Local Public Safety Communications Requirements Through the Year 2010,* WT Docket No. 96–86, Second Report and Order, FCC 07–132 (2007) ("*700 MHz Second Report and Order*"), 22 FCC Rcd 15289 (2007).

[155] *See* Auction of 700 MHz Band Licenses Closes, Winning Bidders Announced for Auction 73, Down Payments Due April 3, 2008, FCC Forms 601 and 602 April 3, 2008, Final Payment Due April 17, 2008, Ten-Day Petition to Deny Period, *Public Notice,* 23 FCC Rcd 4572 (2008).

[156] *Id.* 23 FCC Rcd at 4572–73.

[157] *Id.*

[158] *See Service Rules for the 746–764 MHz Bands, and Revisions to Part 27 of the Commission's Rules,* Second Report and Order, 15 FCC Rcd 5299 (2000) ("*746–764 MHz Band Second Report and Order*").

[159] *See 746–764 MHz Band Second Report and Order,* 15 FCC Rcd at 5343, para. 108.

[160] *See id.*

[161] *See id.,* 15 FCC Rcd 5299, 5343, para. 108 n.246 (for the 746–764 MHz and 776–794 MHz bands, the Commission is exempt from 15 U.S.C. § 632, which requires Federal agencies to obtain SBA approval before adopting small business size standards).

[162] *See* "700 MHz Guard Bands Auction Closes: Winning Bidders Announced," *Public Notice,* 15 FCC Rcd 18026 (2000).

[163] *See* "700 MHz Guard Bands Auction Closes: Winning Bidders Announced," *Public Notice,* 16 FCC Rcd 4590 (WTB 2001).

[164] 47 CFR 90.810, 90.814(b), 90.912.

[165] 47 CFR 90.810, 90.814(b), 90.912.

[166] *See Alvarez Letter 1999.*

[167] *See* "Correction to Public Notice DA 96–586 'FCC Announces Winning Bidders in the Auction of 1020 Licenses to Provide 900 MHz SMR in Major Trading Areas,'" *Public Notice,* 18 FCC Rcd 18367 (WTB 1996).

[168] *See* "Multi-Radio Service Auction Closes," *Public Notice,* 17 FCC Rcd 1446 (WTB 2002).

[169] *See* "800 MHz Specialized Mobile Radio (SMR) Service General Category (851–854 MHz) and Upper Band (861–865 MHz) Auction Closes; Winning Bidders Announced," *Public Notice,* 15 FCC Rcd 17162 (2000).

2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were awarded.[170] Of the 22 winning bidders, 19 claimed small business status and won 129 licenses. Thus, combining all three auctions, 40 winning bidders for geographic licenses in the 800 MHz SMR band claimed status as small business.

76. In addition, there are numerous incumbent site-by-site SMR licensees and licensees with extended implementation authorizations in the 800 and 900 MHz bands. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. In addition, we do not know how many of these firms have 1500 or fewer employees.[171] We assume, for purposes of this analysis, that all of the remaining existing extended implementation authorizations are held by small entities, as that small business size standard is approved by the SBA.

77. *220 MHz Radio Service—Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a definition of small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the small business size standard under the SBA rules applicable to Wireless Telecommunications Carriers (except Satellite).[172] This category provides that a small business is a wireless company employing no more than 1,500 persons.[173] The Commission estimates that most such licensees are small businesses under the SBA's small business standard.

78. *220 MHz Radio Service—Phase II Licensees.* The 220 MHz service has both Phase I and Phase II licenses. The Phase II 220 MHz service licenses are assigned by auction, where mutually exclusive applications are accepted. In the 220 MHz Third Report and Order, the Commission adopted a small business size standard for defining "small" and "very small" businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[174] This small business standard indicates that a "small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years.[175] A "very small business" is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed $3 million for the preceding three years.[176] The SBA has approved these small size standards.[177] A small business is eligible for a 25 percent discount on its winning bid. A very small business is eligible for a 35 percent discount on its winning bid. The first auction of Phase II licenses was conducted in 1998.[178] In the first auction, 908 licenses were offered in three different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group ("EAG") Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold.[179] Thirty-nine small businesses won 373 licenses in the first 220 MHz auction. A second auction in 1999 included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.[180] A third auction included four licenses: 2 BEA licenses and 2 EAG licenses in the 220 MHz Service. No small or very small business won any of these licenses.[181] In 2007, the Commission conducted a fourth auction of the 220 MHz licenses, designated as Auction 72.[182] Auction 72 offered 94 Phase II 220 MHz Service licenses.[183] In this auction, five winning bidders won a total of 76 licenses.[184] Two winning bidders identified themselves as very small businesses won 56 of the 76 licenses. One of the winning bidders that identified itself as a small business won 5 of the 76 licenses won.

79. *Cellular Radiotelephone Service.* Auction 77 was held to resolve one group of mutually exclusive applications for Cellular Radiotelephone Service licenses for unserved areas in New Mexico.[185] Bidding credits for designated entities were not available in Auction 77.[186] In 2008, the Commission completed the closed auction of one unserved service area in the Cellular Radiotelephone Service, designated as Auction 77. Auction 77 concluded with one provisionally winning bid for the unserved area totaling $25,002.[187]

80. *Private Land Mobile Radio ("PLMR").* PLMR systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories, and are often used in support of the licensee's primary (non-telecommunications) business operations. For the purpose of determining whether a licensee of a PLMR system is a small business as defined by the SBA, we use the broad census category, Wireless Telecommunications Carriers (except Satellite). This definition provides that a small entity is any such entity employing no more than 1,500 persons.[188] The Commission does not require PLMR licensees to disclose information about number of employees, so the Commission does not have information that could be used to determine how many PLMR licensees constitute small entities under this definition. We note that PLMR licensees generally use the licensed facilities in support of other business activities, and therefore, it would also be helpful to

[170] *See,* "800 MHz SMR Service Lower 80 Channels Auction Closes; Winning Bidders Announced," *Public Notice,* 16 FCC Rcd 1736 (2000).

[171] *See generally* 13 CFR 121.201, NAICS code 517210.

[172] *Id.*

[173] *Id.*

[174] *Amendment of Part 90 of the Commission's Rules to Provide For the Use of the 220–222 MHz Band by the Private Land Mobile Radio Service,* Third Report and Order, 12 FCC Rcd 10943, 11068–70, paras. 291–295 (1997).

[175] *Id.* at 11068, para. 291.

[176] *Id.*

[177] *See* Letter from Aida Alvarez, Administrator, SBA, to Daniel Phythyon, Chief, WTB, FCC (Jan. 6, 1998) ("*Alvarez to Phythyon Letter 1998*").

[178] *See generally* "220 MHz Service Auction Closes," *Public Notice,* 14 FCC Rcd 605 (1998).

[179] *See* "FCC Announces It is Prepared to Grant 654 Phase II 220 MHz Licenses After Final Payment is Made," *Public Notice,* 14 FCC Rcd 1085 (1999).

[180] *See* "Phase II 220 MHz Service Spectrum Auction Closes," *Public Notice,* 14 FCC Rcd 11218 (1999).

[181] *See* "Multi-Radio Service Auction Closes," *Public Notice,* 17 FCC Rcd 1446 (2002).

[182] *See* "Auction of Phase II 220 MHz Service Spectrum Scheduled for June 20, 2007, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures for Auction 72," *Public Notice,* 22 FCC Rcd 3404 (2007).

[183] *Id.*

[184] *See* "Auction of Phase II 220 MHz Service Spectrum Licenses Closes, Winning Bidders Announced for Auction 72, Down Payments due July 18, 2007, FCC Forms 601 and 602 due July 18, 2007, Final Payments due August 1, 2007, Ten-Day Petition to Deny Period," *Public Notice,* 22 FCC Rcd 11573 (2007).

[185] *See* Closed Auction of Licenses for Cellular Unserved Service Area Scheduled for June 17, 2008, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 77, *Public Notice,* 23 FCC Rcd 6670 (2008).

[186] *Id.* at 6685.

[187] *See* Auction of Cellular Unserved Service Area License Closes, Winning Bidder Announced for Auction 77, Down Payment due July 2, 2008, Final Payment due July 17, 2008, *Public Notice,* 23 FCC Rcd 9501 (2008).

[188] *See* 13 CFR 121.201, NAICS code 517210.

assess PLMR licensees under the standards applied to the particular industry subsector to which the licensee belongs.[189]

81. As of March 2010, there were 424,162 PLMR licensees operating 921,909 transmitters in the PLMR bands below 512 MHz. We note that any entity engaged in a commercial activity is eligible to hold a PLMR license, and that any revised rules in this context could therefore potentially impact small entities covering a great variety of industries.

82. *Fixed Microwave Services.* Fixed microwave services include common carrier,[190] private operational-fixed,[191] and broadcast auxiliary radio services.[192] At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not created a size standard for a small business specifically with respect to fixed microwave services. For purposes of this analysis, the Commission uses the SBA small business size standard for the category Wireless Telecommunications Carriers (except Satellite), which is 1,500 or fewer employees.[193] The Commission does not have data specifying the number of these licensees that have no more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are 22,015 or fewer common carrier fixed licensees and 61,670 or fewer private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by the rules and policies proposed herein. We note, however, that the common carrier microwave fixed licensee category includes some large entities.

83. *39 GHz Service.* The Commission created a special small business size standard for 39 GHz licenses—an entity that has average gross revenues of $40 million or less in the three previous calendar years.[194] An additional size standard for "very small business" is: an entity that, together with affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[195] The SBA has approved these small business size standards.[196] The auction of the 2,173, 39 GHz licenses was conducted in 2000. The 18 bidders who claimed small business status won 849 licenses.

84. *Local Multipoint Distribution Service.* Local Multipoint Distribution Service ("LMDS") is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications.[197] The auction of the 986 LMDS licenses began and closed in 1998. The Commission established a small business size standard for LMDS licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years.[198] An additional small business size standard for "very small business" was added as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[199] The SBA has approved these small business size standards in the context of LMDS auctions.[200] There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. In 1999, the Commission re-auctioned 161 licenses; there were 32 small and very small businesses that won 119 licenses.

85. *218–219 MHz Service.* The first auction of 218–219 MHz (previously referred to as the Interactive and Video Data Service or IVDS) spectrum resulted in 178 entities winning licenses for 594 Metropolitan Statistical Areas ("MSAs").[201] Of the 594 licenses, 567 were won by 167 entities qualifying as a small business. For that auction, the Commission defined a small business as an entity that, together with its affiliates, has no more than a $6 million net worth and, after Federal income taxes (excluding any carry over losses), has no more than $2 million in annual profits each year for the previous two years.[202] In the *218–219 MHz Report and Order and Memorandum Opinion and Order,* we defined a small business as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not exceeding $15 million for the preceding three years.[203] A very small business is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not exceeding $3 million for the preceding three years.[204] The SBA has approved of these definitions.[205]

86. *Location and Monitoring Service ("LMS").* Multilateration LMS systems use non-voice radio techniques to determine the location and status of mobile radio units. For purposes of auctioning LMS licenses, 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 $15 million.[206] A "very small business" is defined as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the

[189] *See generally* 13 CFR 121.201.

[190] *See* 47 CFR 101 *et seq.* for common carrier fixed microwave services (except Multipoint Distribution Service).

[191] Persons eligible under parts 80 and 90 of the Commission's Rules can use Private Operational-Fixed Microwave services. *See* 47 CFR Parts 80 and 90. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee's commercial, industrial, or safety operations.

[192] Auxiliary Microwave Service is governed by Part 74 of Title 47 of the Commission's Rules. *See* 47 CFR Part 74. This service is available to licensees of broadcast stations and to broadcast and cable network entities. Broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile television pickups, which relay signals from a remote location back to the studio.

[193] 13 CFR 121.201, NAICS code 517210.

[194] *See Amendment of the Commission's Rules Regarding the 37.0–38.6 GHz and 38.6–40.0 GHz Bands,* ET Docket No. 95–183, Report and Order, 12 FCC Rcd 18600 (1997).

[195] *Id.*

[196] *See* Letter from Aida Alvarez, Administrator, SBA, to Kathleen O'Brien Ham, Chief, Auctions and Industry Analysis Division, WTB, FCC (Feb. 4, 1998); *see* Letter from Hector Barreto, Administrator, SBA, to Margaret Wiener, Chief, Auctions and Industry Analysis Division, WTB, FCC (Jan. 18, 2002).

[197] *See Rulemaking to Amend Parts 1, 2, 21, 25, of the Commission's Rules to Redesignate the 27.5–29.5 GHz Frequency Band, Reallocate the 29.5–30.5 Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services,* Second Report and Order, Order on Reconsideration, and Fifth Notice of Proposed Rule Making, 12 FCC Rcd 12545, 12689–90, para. 348 (1997) ("*LMDS Second Report and Order*").

[198] *See LMDS Second Report and Order,* 12 FCC Rcd at 12689–90, para. 348.

[199] *See id.*

[200] *See Alvarez to Phythyon Letter 1998.*

[201] *See* "*Interactive Video and Data Service (IVDS) Applications Accepted for Filing,*" Public Notice, 9 FCC Rcd 6227 (1994).

[202] *Implementation of Section 309(j) of the Communications Act—Competitive Bidding,* Fourth Report and Order, 9 FCC Rcd 2330 (1994).

[203] *Amendment of Part 95 of the Commission's Rules to Provide Regulatory Flexibility in the 218–219 MHz Service,* Report and Order and Memorandum Opinion and Order, 15 FCC Rcd 1497 (1999).

[204] *Id.*

[205] *See Alvarez to Phythyon Letter 1998.*

[206] *Amendment of Part 90 of the Commission's Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems,* Second Report and Order, 13 FCC Rcd 15182, 15192, para. 20 (1998) ("*Automatic Vehicle Monitoring Systems Second Report and Order*"); *see also* 47 CFR 90.1103.

preceding three years not exceeding $3 million.[207] These definitions have been approved by the SBA.[208] An auction for LMS licenses was conducted in 1999. Of the 528 licenses auctioned, 289 licenses were sold to four small businesses.

87. *Rural Radiotelephone Service.* The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service.[209] A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System ("BETRS").[210] In the present context, we will use 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.[211] There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by our action.

88. *Air-Ground Radiotelephone Service.*[212] The Commission has previously used the SBA's small business definition applicable to Wireless Telecommunications Carriers (except Satellite), *i.e.,* an entity employing no more than 1,500 persons.[213] There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and under that definition, we estimate 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.[214] 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.[215] These definitions were approved by the SBA.[216] In 2006, the Commission completed an auction of nationwide commercial Air-Ground Radiotelephone Service licenses in the 800 MHz band (Auction 65). The auction closed with two winning bidders winning two Air-Ground Radiotelephone Services licenses. Neither of the winning bidders claimed small business status.

89. *Aviation and Marine Radio Services.* There are approximately 26,162 aviation, 34,555 marine (ship), and 3,296 marine (coast) licensees.[217] The Commission has not developed a small business size standard specifically applicable to all licensees. For purposes of this analysis, we will use the SBA small business size standard for the category Wireless Telecommunications Carriers (except Satellite), which is 1,500 or fewer employees.[218] We are unable to determine how many of those licensed fall under this standard. For purposes of our evaluations in this analysis, we estimate that there are up to approximately 62,969 licensees that are small businesses under the SBA standard.[219] In 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875–157.4500 MHz (ship transmit) and 161.775–162.0125 MHz (coast transmit) bands. For this auction, the Commission defined a "small" business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $15 million dollars. In addition, a "very small" business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $3 million dollars.[220] Further, the Commission made available Automated Maritime Telecommunications System ("AMTS") licenses in Auctions 57 and 61.[221] Winning bidders could claim status as a very small business or a very small business. A very small business for this service is defined as an entity with attributed average annual gross revenues that do not exceed $3 million for the preceding three years, and a small business is defined as an entity with attributed average annual gross revenues of more than $3 million but less than $15 million for the preceding three years.[222] Three of the winning bidders in Auction 57 qualified as small or very small businesses, while three winning entities in Auction 61 qualified as very small businesses.

90. *Offshore Radiotelephone Service.* This service operates on several ultra high frequencies ("UHF") television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico.[223] There is presently 1 licensee in this service. We do not have information whether that licensee would qualify as small under the SBA's small business size standard for Wireless Telecommunications Carriers (except Satellite) services.[224] Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.[225]

91. *Multiple Address Systems ("MAS").* Entities using MAS spectrum, in general, fall into two categories: (1) Those using the spectrum for profit-based uses, and (2) those using the spectrum for private internal uses. The Commission defines a small business for MAS licenses as an entity that has average gross revenues of less than $15 million in the three previous calendar years.[226] A very small business is defined as an entity that, together with its affiliates, has average gross revenues of not more than $3 million for the preceding three calendar years.[227] The

[207] *Automatic Vehicle Monitoring Systems Second Report and Order,* 13 FCC Rcd at 15192, para. 20; *see also* 47 CFR 90.1103.

[208] *See Alvarez Letter 1998.*

[209] The service is defined in Section 22.99 of the Commission's rules, 47 CFR 22.99.

[210] BETRS is defined in Sections 22.757 and 22.759 of the Commission's rules, 47 CFR 22.757 and 22.759.

[211] 13 CFR 121.201, NAICS code 517210.

[212] The service is defined in Section 22.99 of the Commission's rules, 47 CFR 22.99.

[213] 13 CFR 121.201, NAICS codes 517210.

[214] *Amendment of Part 22 of the Commission's Rules to Benefit the Consumers of Air-Ground Telecommunications Services, Biennial Regulatory Review—Amendment of Parts 1, 22, and 90 of the Commission's Rules, Amendment of Parts 1 and 22 of the Commission's Rules to Adopt Competitive Bidding Rules for Commercial and General Aviation Air-Ground Radiotelephone Service,* WT Docket Nos. 03–103 and 05–42, Order on Reconsideration and Report and Order, 20 FCC Rcd 19663, paras. 28–42 (2005).

[215] *Id.*

[216] *See* Letter from Hector V. Barreto, Administrator, SBA, to Gary D. Michaels, Deputy Chief, Auctions and Spectrum Access Division, WTB, FCC (Sept. 19, 2005).

[217] Vessels that are not required by law to carry a radio and do not make international voyages or communications are not required to obtain an individual license. *See* Amendment of Parts 80 and 87 of the Commission's Rules to Permit Operation of Certain Domestic Ship and Aircraft Radio Stations Without Individual Licenses, *Report and Order,* WT Docket No. 96–82, 11 FCC Rcd 14849 (1996).

[218] 13 CFR 121.201, NAICS code 517210.

[219] A licensee may have a license in more than one category.

[220] *Amendment of the Commission's Rules Concerning Maritime Communications,* PR Docket No. 92–257, Third Report and Order and Memorandum Opinion and Order, 13 FCC Rcd 19853 (1998).

[221] *See* "*Automated Maritime Telecommunications System Spectrum Auction Scheduled for September 15, 2004, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Auction Procedures,*" Public Notice, 19 FCC Rcd 9518 (WTB 2004); "*Auction of Automated Maritime Telecommunications System Licenses Scheduled for August 3, 2005, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Auction Procedures for Auction No. 61,*" Public Notice, 20 FCC Rcd 7811 (WTB 2005).

[222] 47 CFR 80.1252.

[223] This service is governed by Subpart I of Part 22 of the Commission's rules. *See* 47 CFR 22.1001–22.1037.

[224] 13 CFR 121.201, NAICS code 517210.

[225] *Id.*

[226] *See Amendment of the Commission's Rules Regarding Multiple Address Systems,* Report and Order, 15 FCC Rcd 11956, 12008, para. 123 (2000).

[227] *Id.*

SBA has approved these definitions.[228] The majority of these entities will most likely be licensed in bands where the Commission has implemented a geographic area licensing approach that would require the use of competitive bidding procedures to resolve mutually exclusive applications. The Commission's licensing database indicates that, as of March 5, 2010, there were over 11,500 MAS station authorizations. In addition, an auction for 5,104 MAS licenses in 176 EAs was conducted in 2001.[229] Seven winning bidders claimed status as small or very small businesses and won 611 licenses. In 2005, the Commission completed an auction (Auction 59) of 4,226 MAS licenses in the Fixed Microwave Services from the 928/959 and 932/941 MHz bands. Twenty-six winning bidders won a total of 2,323 licenses. Of the 26 winning bidders in this auction, five claimed small business status and won 1,891 licenses.

92. With respect to entities that use, or seek to use, MAS spectrum to accommodate internal communications needs, we note that MAS serves an essential role in a range of industrial, safety, business, and land transportation activities. MAS radios are used by companies of all sizes, operating in virtually all U.S. business categories, and by all types of public safety entities. For the majority of private internal users, the small business size standard developed by the SBA would be more appropriate. The applicable size standard in this instance appears to be that of Wireless Telecommunications Carriers (except Satellite). This definition provides that a small entity is any such entity employing no more than 1,500 persons.[230] The Commission's licensing database indicates that, as of January 20, 1999, of the 8,670 total MAS station authorizations, 8,410 authorizations were for private radio service, and of these, 1,433 were for private land mobile radio service.

93. *1.4 GHz Band Licensees.* The Commission conducted an auction of 64 1.4 GHz band licenses [231] in 2007.[232] In that auction, the Commission defined "small business" as an entity that, together with its affiliates and controlling interests, had average gross revenues that exceed $15 million but do not exceed $40 million for the preceding three years, and a "very small business" as an entity that, together with its affiliates and controlling interests, has had average annual gross revenues not exceeding $15 million for the preceding three years.[233] Neither of the two winning bidders sought designated entity status.[234]

94. *Incumbent 24 GHz Licensees.* This analysis may affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. The applicable SBA small business size standard is that of Wireless Telecommunications Carriers (except Satellite). This category provides that such a company is small if it employs no more than 1,500 persons.[235] The broader census data notwithstanding, we believe that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent[236] and TRW, Inc. It is our understanding that Teligent and its related companies have fewer than 1,500 employees, though this may change in the future. TRW is not a small entity. There are approximately 122 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 122 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by our action.

95. *Future 24 GHz Licensees.* With respect to new applicants in the 24 GHz band, we have defined "small business" as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not exceeding $15 million.[237] "Very small business" in the 24 GHz band is defined as an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding $3 million for the preceding three years.[238] The SBA has approved these definitions.[239] In a 2004 auction of 24 GHz licenses, three winning bidders won seven licenses. Two of the winning bidders were very small businesses that won five licenses.

96. *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")).[240] 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.[241] The BRS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas ("BTAs"). 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, we estimate 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.[242] After adding the number of small business auction licensees to the number of incumbent licensees not already counted, we find that there are currently approximately 440 BRS licensees that are defined as small businesses under either the SBA or the Commission's rules. The Commission has adopted three levels of bidding credits for BRS: (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

[228] *See Alvarez Letter 1999.*

[229] *See* "*Multiple Address Systems Spectrum Auction Closes,*" Public Notice, 16 FCC Rcd 21011 (2001).

[230] *See* 13 CFR 121.201, NAICS code 517210.

[231] *See* "*Auction of 1.4 GHz Bands Licenses Scheduled for February 7, 2007,*" Public Notice, 21 FCC Rcd 12393 (WTB 2006).

[232] *See* "*Auction of 1.4 GHz Band Licenses Closes; Winning Bidders Announced for Auction No. 69,*" Public Notice, 22 FCC Rcd 4714 (2007) ("*Auction No. 69 Closing PN*").

[233] *Auction No. 69 Closing PN,* Attachment C.

[234] *See Auction No. 69 Closing PN.*

[235] 13 CFR 121.201, NAICS code 517210.

[236] Teligent acquired the DEMS licenses of FirstMark, the only licensee other than TRW in the 24 GHz band whose license has been modified to require relocation to the 24 GHz band.

[237] *Amendments to Parts 1, 2, 87 and 101 of the Commission's Rules To License Fixed Services at 24 GHz,* Report and Order, 15 FCC Rcd 16934, 16967, para. 77 (2000) ("*24 GHz Report and Order*"); *see also* 47 CFR 101.538(a)(2).

[238] *24 GHz Report and Order,* 15 FCC Rcd at 16967, para. 77; *see also* 47 CFR 101.538(a)(1).

[239] *See* Letter from Gary M. Jackson, Assistant Administrator, SBA, to Margaret W. Wiener, Deputy Chief, Auctions and Industry Analysis Division, WTB, FCC (July 28, 2000).

[240] *Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act—Competitive Bidding,* MM Docket No. 94–131 and PP Docket No. 93–253, Report and Order, 10 FCC Rcd 9589, 9593, para. 7 (1995) ("*MDS Auction R&O*").

[241] 47 CFR 21.961(b)(1).

[242] 47 U.S.C. 309(j). Hundreds of stations were licensed to incumbent MDS licensees prior to implementation of Section 309(j) of the Communications Act of 1934, 47 U.S.C. 309(j). For these pre-auction licenses, the applicable standard is SBA's small business size standard.

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.[243] In 2009, the Commission conducted Auction 86, which offered 78 BRS licenses.[244] Auction 86 concluded with the sale of 61 licenses.[245] Of the ten winning bidders, three bidders that claimed small business status won 7 licenses, and two bidders that claimed entrepreneur status won six licenses.

97. 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.[246] Thus, we estimate 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." [247] 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 we must, however, use 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.[248] 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.[249] 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.[250] Thus, the majority of these firms can be considered small.

98. *Television Broadcasting.* This Economic Census category "comprises establishments primarily engaged in broadcasting images together with sound. These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public." [251] The SBA has created the following small business size standard for Television Broadcasting firms: those having $14 million or less in annual receipts.[252] The Commission has estimated the number of licensed commercial television stations to be 1,392.[253] In addition, according to Commission staff review of the BIA Publications, Inc., Master Access Television Analyzer Database (BIA) on March 30, 2007, about 986 of an estimated 1,395 commercial television stations (or approximately 72 percent) had revenues of $13 million or less.[254] We therefore estimate that the majority of commercial television broadcasters are small entities.

99. We note, however, that in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations [255] must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, an element of the definition of "small business" is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive to that extent.

100. In addition, the Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 391.[256] These stations are non-profit, and therefore considered to be small entities.[257]

101. In addition, there are also 2,387 low power television stations (LPTV).[258] Given the nature of this service, we will presume that all LPTV licensees qualify as small entities under the above SBA small business size standard.

102. *Radio Broadcasting.* This Economic Census category "comprises establishments primarily engaged in broadcasting aural programs by radio to the public. Programming may originate in their own studio, from an affiliated network, or from external sources."[259] The SBA has established a small business size standard for this category, which is: such firms having $7 million or less in annual receipts.[260] According to Commission staff review of BIA Publications, Inc.'s *Master Access Radio Analyzer Database* on March 31, 2005, about 10,840 (95%) of 11,410 commercial radio stations had revenues of $6 million or less. Therefore, the majority of such entities are small entities.

103. We note, however, that in assessing whether a business concern qualifies as small under the above size standard, business affiliations must be included.[261] In addition, to be

[243] *Id.* at 8296.

[244] Auction of Broadband Radio Service (BRS) Licenses, Scheduled for October 27, 2009, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 86, *Public Notice*, 24 FCC Rcd 8277 (2009).

[245] Auction of Broadband Radio Service Licenses Closes, Winning Bidders Announced for Auction 86, Down Payments Due November 23, 2009, Final Payments Due December 8, 2009, Ten-Day Petition to Deny Period, *Public Notice*, 24 FCC Rcd 13572 (2009).

[246] The term "small entity" within SBREFA applies to small organizations (nonprofits) and to small governmental jurisdictions (cities, counties, towns, townships, villages, school districts, and special districts with populations of less than 50,000). 5 U.S.C. 601(4)–(6). We do not collect annual revenue data on EBS licensees.

[247] U.S. Census Bureau, 2007 NAICS Definitions, "517110 Wired Telecommunications Carriers" (partial definition); *http://www.census.gov/naics/2007/def/ND517110.HTM#N517110.*

[248] 13 CFR 121.201, NAICS code 517110.

[249] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 517510 (issued November 2005).

[250] *Id.* An additional 61 firms had annual receipts of $25 million or more.

[251] U.S. Census Bureau, 2007 NAICS Definitions, "515120 Television Broadcasting" (partial definition); *http://www.census.gov/naics/2007/def/ND515120.HTM#N515120.*

[252] 13 CFR 121.201, NAICS code 515120 (updated for inflation in 2008).

[253] *See FCC News Release*, "Broadcast Station Totals as of September 30, 2010," dated October 22, 2010; *http://www.fcc.gov/Daily_Releases/Daily_Business/2008/db0318/DOC–280836A1.pdf.*

[254] We recognize that BIA's estimate differs slightly from the FCC total given *supra.*

[255] "[Business concerns] are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has the power to control both." 13 CFR 21.103(a)(1).

[256] *See FCC News Release*, "Broadcast Station Totals as of September 30, 2010," dated October 22, 2010; *http://www.fcc.gov/Daily_Releases/Daily_Business/2008/db0318/DOC–280836A1.pdf.*

[257] *See generally* 5 U.S.C. 601(4), (6).

[258] *See FCC News Release*, "Broadcast Station Totals as of September 30, 2010," dated October 22, 2010; *http://www.fcc.gov/Daily_Releases/Daily_Business/2008/db0318/DOC–280836A1.pdf.*

[259] U.S. Census Bureau, 2007 NAICS Definitions, "515112 Radio Stations"; *http://www.census.gov/naics/2007/def/ND515112.HTM#N515112.*

[260] 13 CFR 121.201, NAICS code 515112 (updated for inflation in 2008).

[261] "Concerns and entities are affiliates of each other when one controls or has the power to control the other, or a third party or parties controls or has the power to control both. It does not matter whether control is exercised, so long as the power

Continued

determined to be a "small business," the entity may not be dominant in its field of operation.[262] We note that it is difficult at times to assess these criteria in the context of media entities, and our estimate of small businesses may therefore be over-inclusive.

104. *Auxiliary, Special Broadcast and Other Program Distribution Services.* This service involves a variety of transmitters, generally used to relay broadcast programming to the public (through translator and booster stations) or within the program distribution chain (from a remote news gathering unit back to the station). The Commission has not developed a definition of small entities applicable to broadcast auxiliary licensees. The applicable definitions of small entities are those, noted previously, under the SBA rules applicable to radio broadcasting stations and television broadcasting stations.[263]

105. The Commission estimates that there are approximately 5,618 FM translators and boosters.[264] The Commission does not collect financial information on any broadcast facility, and the Department of Commerce does not collect financial information on these auxiliary broadcast facilities. We believe that most, if not all, of these auxiliary facilities could be classified as small businesses by themselves. We also recognize that most commercial translators and boosters are owned by a parent station which, in some cases, would be covered by the revenue definition of small business entity discussed above. These stations would likely have annual revenues that exceed the SBA maximum to be designated as a small business ($7.0 million for a radio station or $14.0 million for a TV station). Furthermore, they do not meet the Small Business Act's definition of a "small business concern" because they are not independently owned and operated. [265]

106. *Cable Television Distribution Services.* Since 2007, these 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." [266] 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 we must, however, use 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.[267] 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.[268] 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.[269] Thus, the majority of these firms can be considered small.

107. *Cable Companies and Systems.* The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers, nationwide.[270] Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard.[271] In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers.[272] Industry data indicate that, of 6,635 systems nationwide, 5,802 systems have under 10,000 subscribers, and an additional 302 systems have 10,000–19,999 subscribers.[273] Thus, under this second size standard, most cable systems are small.

108. *Cable System Operators.* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000." [274] The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate.[275] Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard.[276] We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million,[277] and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

109. *Open Video Systems.* The open video system ("OVS") framework was established in 1996, and is one of four statutorily recognized options for the provision of video programming services by local exchange carriers.[278] The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services,[279] OVS falls within the SBA small business size standard covering cable services, which

to control exists." 13 CFR 121.103(a)(1) (an SBA regulation).

[262] 13 CFR 121.102(b) (an SBA regulation).

[263] 13 CFR 121.201, NAICS codes 515112 and 515120.

[264] *See supra* note 242.

[265] *See* 15 U.S.C. 632.

[266] U.S. Census Bureau, 2007 NAICS Definitions, "517110 Wired Telecommunications Carriers" (partial definition); *http://www.census.gov/naics/2007/def/ND517110.HTM#N517110.*

[267] 13 CFR 121.201, NAICS code 517110.

[268] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 517510 (issued November 2005).

[269] *Id.* An additional 61 firms had annual receipts of $25 million or more.

[270] 47 CFR 76.901(e). The Commission determined that this size standard equates approximately to a size standard of $100 million or less in annual revenues. *Implementation of Sections of the 1992 Cable Act: Rate Regulation*, Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393, 7408 (1995).

[271] These data are derived from: R.R. Bowker, *Broadcasting & Cable Yearbook 2006*, "Top 25 Cable/Satellite Operators," pages A–8 & C–2 (data current as of June 30, 2005); Warren Communications News, *Television & Cable Factbook 2006*, "Ownership of Cable Systems in the United States," pages D–1805 to D–1857.

[272] 47 CFR 76.901(c).

[273] Warren Communications News, *Television & Cable Factbook 2008*, "U.S. Cable Systems by Subscriber Size," page F–2 (data current as of Oct. 2007). The data do not include 851 systems for which classifying data were not available.

[274] 47 U.S.C. 543(m)(2); *see* 47 CFR 76.901(f) & nn. 1–3.

[275] 47 CFR 76.901(f); *see* Public Notice, *FCC Announces New Subscriber Count for the Definition of Small Cable Operator*, DA 01–158 (Cable Services Bureau, Jan. 24, 2001).

[276] These data are derived from: R.R. Bowker, *Broadcasting & Cable Yearbook 2006*, "Top 25 Cable/Satellite Operators," pages A–8 & C–2 (data current as of June 30, 2005); Warren Communications News, *Television & Cable Factbook 2006*, "Ownership of Cable Systems in the United States," pages D–1805 to D–1857.

[277] The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to Section 76.901(f) of the Commission's rules. *See* 47 CFR 76.909(b).

[278] 47 U.S.C. 571(a)(3)–(4). *See Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, Thirteenth Annual Report*, 24 FCC Rcd 542, 606 para. 135 (2009) ("*Thirteenth Annual Cable Competition Report*").

[279] *See* 47 U.S.C. 573.

is "Wired Telecommunications Carriers." [280] 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 such services we must, however, use 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.[281] 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.[282] 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.[283] Thus, the majority of cable firms can be considered small. In addition, we note that the Commission has certified some OVS operators, with some now providing service.[284] Broadband service providers ("BSPs") are currently the only significant holders of OVS certifications or local OVS franchises.[285] The Commission does not have financial or employment information regarding the entities authorized to provide OVS, some of which may not yet be operational. Thus, again, at least some of the OVS operators may qualify as small entities.

110. *Cable Television Relay Service.* This service includes transmitters generally used to relay cable programming within cable television system distribution systems. This cable service is 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." [286] 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 cable services we must, however, use 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.[287] 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.[288] 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.[289] Thus, the majority of these firms can be considered small.

111. *Multichannel Video Distribution and Data Service.* MVDDS is a terrestrial fixed microwave service operating in the 12.2–12.7 GHz band. The Commission adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits. It defined a very small business as an entity with average annual gross revenues not exceeding $3 million for the preceding three years; a small business as an entity with average annual gross revenues not exceeding $15 million for the preceding three years; and an entrepreneur as an entity with average annual gross revenues not exceeding $40 million for the preceding three years.[290] These definitions were approved by the SBA.[291] On January 27, 2004, the Commission completed an auction of 214 MVDDS licenses (Auction No. 53). In this auction, ten winning bidders won a total of 192 MVDDS licenses.[292] Eight of the ten winning bidders claimed small business status and won 144 of the licenses. The Commission also held an auction of MVDDS licenses on December 7, 2005 (Auction 63). Of the three winning bidders who won 22 licenses, two winning bidders, winning 21 of the licenses, claimed small business status.[293]

112. *Amateur Radio Service.* These licensees are held by individuals in a noncommercial capacity; these licensees are not small entities.

113. *Aviation and Marine Services.* Small businesses in the aviation and marine radio services use a very high frequency ("VHF") marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or radar) or an emergency locator transmitter. The Commission has not developed a small business size standard specifically applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category Wireless Telecommunications Carriers (except Satellite), which is 1,500 or fewer employees.[294] Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. For purposes of our evaluations in this analysis, we estimate that there are up to approximately 712,000 licensees that are small businesses (or individuals) under the SBA standard. In addition, between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875–157.4500 MHz (ship transmit) and 161.775–162.0125 MHz (coast transmit) bands. For purposes of the auction, the Commission defined a "small" business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $15 million dollars. In addition, a "very small" business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $3

[280] U.S. Census Bureau, 2007 NAICS Definitions, "517110 Wired Telecommunications Carriers"; *http://www.census.gov/naics/2007/def/ND517110.HTM#N517110.*

[281] 13 CFR 121.201, NAICS code 517110.

[282] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 517510 (issued November 2005).

[283] *Id.* An additional 61 firms had annual receipts of $25 million or more.

[284] A list of OVS certifications may be found at *http://www.fcc.gov/mb/ovs/csovscer.html.*

[285] *See Thirteenth Annual Cable Competition Report*, 24 FCC Rcd at 606–07 para. 135. BSPs are newer firms that are building state-of-the-art, facilities-based networks to provide video, voice, and data services over a single network.

[286] U.S. Census Bureau, 2007 NAICS Definitions, "517110 Wired Telecommunications Carriers" (partial definition); *http://www.census.gov/naics/2007/def/ND517110.HTM#N517110.*

[287] 13 CFR 121.201, NAICS code 517110.

[288] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 517510 (issued November 2005).

[289] *Id.* An additional 61 firms had annual receipts of $25 million or more.

[290] *Amendment of Parts 2 and 25 of the Commission's Rules to Permit Operation of NGSO FSS Systems Co-Frequency with GSO and Terrestrial Systems in the Ku-Band Frequency Range; Amendment of the Commission's Rules to Authorize Subsidiary Terrestrial Use of the 12.2–12.7 GHz Band by Direct Broadcast Satellite Licenses and their Affiliates; and Applications of Broadwave USA, PDC Broadband Corporation, and Satellite Receivers, Ltd. to provide A Fixed Service in the 12.2–12.7 GHz Band*, ET Docket No. 98–206, Memorandum Opinion and Order and Second Report and Order, 17 FCC Rcd 9614, 9711, para. 252 (2002).

[291] *See* Letter from Hector V. Barreto, Administrator, U.S. Small Business Administration, to Margaret W. Wiener, Chief, Auctions and Industry Analysis Division, WTB, FCC (Feb. 13, 2002).

[292] *See* "*Multichannel Video Distribution and Data Service Auction Closes*," Public Notice, 19 FCC Rcd 1834 (2004).

[293] *See* "*Auction of Multichannel Video Distribution and Data Service Licenses Closes; Winning Bidders Announced for Auction No. 63*," Public Notice, 20 FCC Rcd 19807 (2005).

[294] 13 CFR 121.201, NAICS code 517210.

million dollars.[295] There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as "small" businesses under the above special small business size standards.

114. *Personal Radio Services.* Personal radio services provide short-range, low power radio for personal communications, radio signaling, and business communications not provided for in other services. The Personal Radio Services include spectrum licensed under Part 95 of our rules.[296] These services include Citizen Band Radio Service ("CB"), General Mobile Radio Service ("GMRS"), Radio Control Radio Service ("R/C"), Family Radio Service ("FRS"), Wireless Medical Telemetry Service ("WMTS"), Medical Implant Communications Service ("MICS"), Low Power Radio Service ("LPRS"), and Multi-Use Radio Service ("MURS").[297] There are a variety of methods used to license the spectrum in these rule parts, from licensing by rule, to conditioning operation on successful completion of a required test, to site-based licensing, to geographic area licensing. Under the RFA, the Commission is required to make a determination of which small entities are directly affected by the rules being proposed. Since all such entities are wireless, we apply the definition of Wireless Telecommunications Carriers (except Satellite), pursuant to which a small entity is defined as employing 1,500 or fewer persons.[298] Many of the licensees in these services are individuals, and thus are not small entities. In addition, due to the mostly unlicensed and shared nature of the spectrum utilized in many of these services, the Commission lacks direct information upon which to base an estimation of the number of small entities under an SBA definition that might be directly affected by our action.

115. *Public Safety Radio Services.* Public Safety radio services include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services.[299] There are a total of approximately 127,540 licensees in these services. Governmental entities[300] as well as private businesses comprise the licensees for these services. All governmental entities with populations of less than 50,000 fall within the definition of a small entity.[301]

116. *Internet Service Providers.* The 2007 Economic Census places these firms, whose services might include voice over Internet protocol (VoIP), in either of two categories, depending on whether the service is provided over the provider's own telecommunications connections (*e.g.* cable and DSL, ISPs), or over client-supplied telecommunications connections (*e.g.* dial-up ISPs). The former are within the category of Wired Telecommunications Carriers,[302] which has an SBA small business size standard of 1,500 or fewer employees.[303] The latter are within the category of All Other Telecommunications,[304] which has a size standard of annual receipts of $25 million or less.[305] The most current Census Bureau data for all such firms, however, are the 2002 data for the previous census category called Internet Service Providers.[306] That category had a small business size standard of $21 million or less in annual receipts, which was revised in late 2005 to $23 million. The 2002 data show that there were 2,529 such firms that operated for the entire year.[307] Of those, 2,437 firms had annual receipts of under $10 million, and an additional 47 firms had receipts of between $10 million and $24,999,999.[308] Consequently, we estimate that the majority of ISP firms are small entities.

117. The ISP industry has changed dramatically since 2002. The 2002 data cited above may therefore include entities that no longer provide Internet access service and may exclude entities that now provide such service. To ensure that this (IRFA/FRFA) describes the universe of small entities that our action might affect, we discuss in turn several different types of entities that might be providing Internet access service.

118. We note that, although we have no specific information on the number of small entities that provide Internet access service over unlicensed spectrum, we include these entities in our IRFA/FRFA.

D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

119. With certain exceptions, the Commission's Schedule of Regulatory Fees applies to all Commission licensees and regulatees. Most licensees will be required to count the number of licenses or call signs authorized, and pay a regulatory fee based on the number of licenses or call signs.[309] In

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[295] *Amendment of the Commission's Rules Concerning Maritime Communications*, Third Report and Order and Memorandum Opinion and Order, 13 FCC Rcd 19853 (1998).

[296] 47 CFR Part 90.

[297] The Citizens Band Radio Service, General Mobile Radio Service, Radio Control Radio Service, Family Radio Service, Wireless Medical Telemetry Service, Medical Implant Communications Service, Low Power Radio Service, and Multi-Use Radio Service are governed by Subpart D, Subpart A, Subpart C, Subpart B, Subpart H, Subpart I, Subpart G, and Subpart J, respectively, of Part 95 of the Commission's rules. *See generally* 47 CFR Part 95.

[298] 13 CFR 121.201, NAICS Code 517210.

[299] With the exception of the special emergency service, these services are governed by Subpart B of part 90 of the Commission's rules, 47 CFR 90.15–90.27. The police service includes approximately 27,000 licensees that serve state, county, and municipal enforcement through telephony (voice), telegraphy (code) and teletype and facsimile (printed material). The fire radio service includes approximately 23,000 licensees comprised of private volunteer or professional fire companies as well as units under governmental control. The local government service that is presently comprised of approximately 41,000 licensees that are state, county, or municipal entities that use the radio for official purposes not covered by other public safety services. There are approximately 7,000 licensees within the forestry service which is comprised of licensees from state departments of conservation and private forest organizations who set up communications networks among fire lookout towers and ground crews. The approximately 9,000 state and local governments are licensed to highway maintenance service provide emergency and routine communications to aid other public safety services to keep main roads safe for vehicular traffic. The approximately 1,000 licensees in the Emergency Medical Radio Service ("EMRS") use the 39 channels allocated to this service for emergency medical service communications related to the delivery of emergency medical treatment. 47 CFR 90.15–90.27. The approximately 20,000 licensees in the special emergency service include medical services, rescue organizations, veterinarians, handicapped persons, disaster relief organizations, school buses, beach patrols, establishments in isolated areas, communications standby facilities, and emergency repair of public communications facilities. 47 CFR 90.33–90.55.

[300] 47 CFR 1.1162.

[301] 5 U.S.C. 601(5).

[302] U.S. Census Bureau, 2007 NAICS Definitions, "517110 Wired Telecommunications Carriers", *http://www.census.gov/naics/2007/def/ND517110.HTM#N517110.*

[303] 13 CFR 121.201, NAICS code 517110 (updated for inflation in 2008).

[304] U.S. Census Bureau, 2007 NAICS Definitions, "517919 All Other Telecommunications"; *http://www.census.gov/naics/2007/def/ND517919.HTM#N517919.*

[305] 13 CFR 121.201, NAICS code 517919 (updated for inflation in 2008).

[306] U.S. Census Bureau, "2002 NAICS Definitions, "518111 Internet Service Providers"; *http://www.census.gov/eped/naics02/def/NDEF518.HTM.*

[307] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 4, NAICS code 518111 (issued Nov. 2005).

[308] An additional 45 firms had receipts of $25 million or more.

[309] *See* 47 CFR 1.1162 for the general exemptions from regulatory fees. *E.g.,* Amateur radio licensees (except applicants for vanity call signs) and operators in other non-licensed services (*e.g.,* Personal Radio, part 15, ship and aircraft). Governments and non-profit (exempt under section 501(c) of the Internal Revenue Code) entities are exempt from payment of regulatory fees and need not submit payment. Non-commercial educational broadcast licensees are exempt from regulatory fees as are licensees of auxiliary broadcast services such as low power auxiliary stations, television auxiliary service stations, remote pickup stations and aural broadcast auxiliary stations where such licenses are used in conjunction with commonly owned non-commercial educational stations. Emergency Alert System licenses for auxiliary service facilities are also exempt as are instructional television fixed

some instances, licensees may decide to submit an FCC Form 159 Remittance Advice. Interstate telephone service providers must compute their annual regulatory fee based on their interstate and international end-user revenue using information they already supply to the Commission in compliance with the Form 499–A, Telecommunications Reporting Worksheet. Compliance with the fee schedule will require some licensees to tabulate the number of units (*e.g.,* cellular telephones, pagers, cable TV subscribers) they have in service. Licensees ordinarily will keep a list of the number of units they have in service as part of their normal business practices. No additional outside professional skills are required to submit a regulatory fee payment, and it can be completed by the employees responsible for an entity's business records.

120. As discussed previously in this *Notice of Proposed Rulemaking,* the Commission concluded in its FY 2009 regulatory fee cycle that licensees filing their annual regulatory fee payments must begin the process by entering the Commission's Fee Filer system with a valid FRN and password. In some instances, it will be necessary to use a specific FRN and password that is linked to a particular regulatory fee bill. Going forward, the submission of hardcopy Form 159 documents will not be permitted for making a regulatory fee payment during the regulatory fee cycle. By requiring licensees to use Fee Filer to begin the regulatory fee payment process, errors resulting from illegible handwriting on hardcopy Form 159's will be reduced, and the Commission will be able to create an electronic record of licensee payment attributes that are more easily traceable than payments that were previously mailed in with a hardcopy Form 159.

service licensees. Regulatory fees are automatically waived for the licensee of any translator station that: (1) Is not licensed to, in whole or in part, and does not have common ownership with, the licensee of a commercial broadcast station; (2) does not derive income from advertising; and (3) is dependent on subscriptions or contributions from members of the community served for support. Receive only earth station permittees are exempt from payment of regulatory fees. A regulatee will be relieved of its fee payment requirement if its total fee due, including all categories of fees for which payment is due by the entity, amounts to less than $10.

121. Licensees and regulatees are advised that failure to submit the required regulatory fee in a timely manner will subject the licensee or regulatee to a late payment penalty of 25 percent in addition to the required fee.[310] If payment is not received, new or pending applications may be dismissed, and existing authorizations may be subject to rescission.[311] Further, in accordance with the DCIA, Federal agencies may bar a person or entity from obtaining a Federal loan or loan insurance guarantee if that person or entity fails to pay a delinquent debt owed to any Federal agency.[312] Nonpayment of regulatory fees is a debt owed to the United States pursuant to 31 U.S.C. 3711 *et seq.,* and the DCIA. Appropriate enforcement measures, as well as administrative and judicial remedies, may be exercised by the Commission. Debts owed to the Commission may result in a person or entity being denied a Federal loan or loan guarantee pending before another Federal agency until such obligations are paid.[313]

122. The Commission's rules currently provide for relief in exceptional circumstances. Persons or entities may request a waiver, reduction or deferment of payment of the regulatory fee.[314] However, timely submission of the required regulatory fee must accompany requests for waivers or reductions. This will avoid any late payment penalty if the request is denied. The fee will be refunded if the request is granted. In exceptional and compelling instances (*e.g.* where payment of the regulatory fee along with the waiver or reduction request could result in reduction of service to a community or other financial hardship to the licensee), the Commission will defer payment in response to a request filed with the appropriate supporting documentation.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

123. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its 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.[315] In our *NPRM,* we sought comment on alternatives that might simplify our fee procedures or otherwise benefit filers, including small entities, while remaining consistent with our statutory responsibilities in this proceeding. We received no comments specifically in response to the IRFA.

124. Several categories of licensees and regulatees are exempt from payment of regulatory fees. Also, waiver procedures provide regulatees, including small entity regulatees, relief in exceptional circumstances. We note that small entities should be assisted by our implementation of the Fee Filer program, and that we have continued our practice of exempting fees whose total sum owed is less than $10.00.

F. Federal Rules that May Duplicate, Overlap, or Conflict With the Proposed Rules

125. None.

V. Ordering Clauses

126. Accordingly, *it is ordered* that, pursuant to Sections 4(i) and (j), 9, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 159, and 303(r), this *NPRM is hereby adopted.*

127. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *NPRM* including the Initial Regulatory Flexibility Analysis in Appendix E, to the Chief Counsel for Advocacy of the U.S. Small Business Administration.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2011–12685 Filed 5–25–11; 8:45 am]

BILLING CODE 6712–01–P

[310] 47 CFR 1.1164.

[311] 47 CFR 1.1164(c).

[312] Public Law 104–134, 110 Stat. 1321 (1996).

[313] 31 U.S.C. 7701(c)(2)(B).

[314] 47 CFR 1.1166.

[315] 5 U.S.C. 603.

Notices

Federal Register
Vol. 76, No. 102
Thursday, May 26, 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

Submission for OMB Review; Comment Request

May 23, 2011.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) 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; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of 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 should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Animal and Plant Health Inspection Service

Title: Importation of Equines into the United States.

OMB Control Number: 0579–0324.

Summary of Collection: Under the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*) the Animal and Plant Health Inspection Service (APHIS) regulates the importation and interstate movement of certain animals and animal products. The law gives the Secretary of Agriculture broad authority to detect, control, or eradicate pests or diseases of livestock or poultry. The regulations in 9 CFR, part 93 prohibit or restrict the importation of certain animals into the United States to prevent the introduction of communicable diseases of livestock and poultry. In accordance with Subpart C of the regulations, the importation of equines into the United States involves a variety of information collection activities.

Need and Use of the Information: The information APHIS collects includes but is not limited to, import permit application; foreign health certificates; photographs for identification; permanent electronic identification compatible reader; application for approval of quarantine or holding facility; written agreement with a State for CEM; plans for medical treatment; certification statements, inspection and other services. Failure to collect this information would diminish APHIS' ability to protect the United States from foreign animal disease incursions. The U.S. equine population would suffer repeated disease outbreaks, and potentially billions of dollars would need to be spent on containment and eradication efforts.

Description of Respondents: Business or other for-profit; State, Local or Tribal Government; Foreign Government.

Number of Respondents: 106.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 36,146.

Animal and Plant Health Inspection Service

Title: Voluntary Bovine Johne's Disease Control Program.

OMB Control Number: 0579–0338.

Summary of Collection: The Animal Health Protection Act of 2002 is the primary Federal law governing the protection of animal health. The law gives the Secretary of Agriculture broad authority to detect, control, or eradicate pests or diseases of livestock or poultry. The regulations in Title 9, Chapter 1, Subchapter C of the Code of Federal Regulations, govern the interstate movement of animals to prevent the dissemination of livestock and poultry diseases in the United States. Supplementing the regulations is the Uniform Program Standards for the Voluntary Bovine Johne's Disease Control Program that outlines the minimal national standards of the program providing specifies on administration of the program, program elements and procedures, and laboratory procedures.

Need and Use of the Information: The objective of this program is to provide minimum national standards for the control of Johne's disease. The program consists of three basic elements: (1) Education, to inform producers about the cost of Johne's disease and to provide information about management strategies to prevent, control, and eliminate it; (2) management, to work with producers to establish good management strategies on their farms; and (3) herd testing and classification, to help separate test-positive herds from test-negative herds. APHIS will collect the necessary information from participants using several different forms. Failing to collect this information would greatly hinder the control of Johne's disease and possible lead to increased prevalence.

Description of Respondents: State, Local or Tribal Government; Farms; Business or other for-profit.

Number of Respondents: 9,125.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 38,187.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2011–13089 Filed 5–25–11; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Farm Service Agency

Final Environmental Assessment and Mitigated Finding of No Significant Impact; Giant Miscanthus in Arkansas, Missouri, Ohio, and Pennsylvania

AGENCY: Commodity Credit Corporation and Farm Service Agency, USDA.

ACTION: Notice; Mitigated Finding of No Significant Impact.

SUMMARY: This notice announces the final environmental assessment (EA) that includes a mitigated finding of no significant impact (FONSI) for the proposed establishment and production of giant miscanthus (*Miscanthus X giganteus*) as a dedicated energy crop to be grown in the Aloterra Energy and MFA Oil Biomass Company (project sponsors) proposed project areas in Arkansas, Missouri, Ohio, and Pennsylvania as part of the Biomass Crop Assistance Program (BCAP). Based on comments received on the draft and in consultation with NRCS and ARS, FSA developed and included a finalized mitigation and monitoring plan as a part of the final EA.

ADDRESSES: For a copy of mitigated FONSI, which is in the final EA, by any following methods:

- Through the FSA home page at *http://www.fsa.usda.gov/FSA/webapp?area=home&subject=ecrc&topic=nep-cd;*
- *E-mail: rschneider@intenvsol.com,* with the following subject line: "Request for copy FONSI and final Giant Miscanthus EA";
- *Write to:* Giant Miscanthus EA Copies, Integrated Environmental Solutions, LLC, 2150 S Central Expy, Ste 110, McKinney, TX 75070.

FOR FURTHER INFORMATION CONTACT: Matthew Ponish, (202) 720–6853. Persons with disabilities who require alternative means for communication (braille, large print, audio tape, *etc.*) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

The Aloterra Energy and MFA Oil Biomass Company submitted a proposal to the Farm Service Agency (FSA) to establish BCAP project areas in Arkansas, Missouri, Ohio, and Pennsylvania. The proposal is to establish and produce giant miscanthus as a dedicated energy crop. FSA analyzed the potential environmental impacts of growing giant miscanthus in those areas in the final EA. FSA reviewed and considered all comments submitted on the draft EA in response to the notice published in the **Federal Register** on April 8, 2011 (76 FR 19741) and used additional inputs from the Natural Resources Conservation Service (NRCS) and the Agricultural Research Service (ARS) in developing the final EA and the mitigation and monitoring plan as described in this notice. In the final EA, FSA has issued a mitigated FONSI on the proposal.

The final EA and mitigation and monitoring plan for the proposed BCAP project areas supporting the establishment and production of Giant Miscanthus (*Miscanthus X giganteus*) in Arkansas, Missouri, Ohio, and Pennsylvania sponsored by Aloterra Energy LLC and MFA Oil Biomass LLC is now available.

Comments Received

FSA received 54 comments on the draft EA from Federal agencies, State agencies, non-governmental organizations, and individuals. Of those comments, 37 commenters supported the proposal and 10 were against the proposal. In the comments, 280 issues were raised concerning many resource topics, National Environmental Policy Act (NEPA) requirements, and BCAP issues. Multiple commenters included air quality; biodiversity; invasiveness; land use changes; long-term monitoring and mitigation; mitigation measures; pests and diseases; seed sterility; species of concern and State-listed protected species; water quality; and water use. The comments were addressed and are included as an appendix to the Final EA.

The comments, as well as consultation with NRCS and ARS, provided the basis for the mitigation measures and monitoring activities that will occur within each project area. More site-specific measures, which may be more stringent than the overall project area measures, depending upon the individual contract acreage and the project area, will be identified during the development of the individual producer's conservation plan, developed with the assistance of a qualified technical service provider.

The Record of Decision for the Final BCAP Programmatic Environmental Impact Statement published in the **Federal Register** on October 27, 2010 (75 FR 65995–66007) is incorporated by reference in the EA. FSA considered the conditions specified in the record of decision and comments to the draft EA, as a result, FSA determined that it should do an EA to make a determination about whether there could be significant environmental impacts. The findings of the Final EA and mitigation and monitoring plan are summarized below.

Decision

FSA, on behalf of the Commodity Credit Corporation (CCC), has prepared an EA to evaluate the environmental consequences associated with establishing BCAP project areas that support the establishment and production of giant miscanthus (*Miscanthus X giganteus*) on 50,000 acres per proposed project area (200,000 acres total) by 2014. BCAP is a program authorized by the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246, commonly referred to as the 2008 Farm Bill) that provides financial assistance to contract producers in approved project areas for the establishment and production of perennial bioenergy crops and annual bioenergy crops that show exceptional promise for producing bioenergy or biofuels that preserve natural resources and that are not primarily grown for food or animal feed.

The purpose of the Proposed Action is to support the establishment and production of giant miscanthus as a crop for energy production to be grown by BCAP participants in the project areas proposed in Arkansas, Missouri, Ohio, and Pennsylvania. The need for the Proposed Action is to provide renewable biomass feedstock to a Biomass Conversion Facility (BCF) for use in energy production with and potentially outside the immediate region(s).

Proposed Action

Aloterra Energy LLC and MFA Oil Biomass LLC (project sponsors) are proposing that FSA establishes BCAP project areas that support the establishment and production of giant miscanthus on 50,000 acres per proposed project area (200,000 total acres) by 2014, with crop longevity of 20 to 30 years. The acreage projected to be enrolled within the proposed project areas are marginal croplands and pastureland.

The proposed project areas are located in four States in four distinct proposed project areas. Missouri contains two proposed project areas: Columbia and Aurora. Arkansas contains one proposed project area: Paragould. Ohio and Pennsylvania contain the final proposed project area: Ashtabula. Each proposed project area is named for the approximate location of the BCF that will be used to process the giant miscanthus biomass into pellets to be shipped to other location. Each proposed project area was developed at

an approximate 50-mile radius from the approximate BCAP location in that area.

The establishment and production of giant miscanthus would begin with centralized propagation acres on each farm, which would be distributed to plantation acres during the next growing season. During the 2011 planting season, the initial establishment would require a centralized location within each proposed project area with center-pivot irrigation due to the timing of planting and current climatic conditions occurring during the growing season. The centralized propagation area for the entire proposed project area would only occur for the 2011 planting season; all other planting seasons would follow the on-farm model with the initial establishment of propagation acres, followed by plantation acres the following growing season.

Equipment to be used to establish giant miscanthus would be modified equipment from existing perennial grass industries. Equipment used to harvest and bale giant miscanthus would be similar to existing types of agricultural machinery used for hay crops; however, they would need to be more heavy-duty due to the increased biomass amounts being harvested and baled.

Reasons for Mitigated Finding of No Significant Impact

In consideration of the analysis documented in the EA and the reasons outlined in the FONSI, the Proposed Action would not constitute a major Federal action that would significantly affect the human environment. Therefore, an environmental impact statement (EIS) will not be prepared. The determination is based on the following:

1. The Proposed Action as outlined in the EA would provide minor beneficial effects to socioeconomics, soil resources, and water quality and quantity of the local areas due to diversified agricultural production, establishment of perennial vegetation on highly erodible soils, and estimated higher water use efficiency of the species to be established.

2. The Proposed Action could result in minor negative effects from land use changes associated with marginal and idle croplands and pasturelands returning to agricultural production; vegetation composition on pasturelands, which in turn could alter wildlife habitat, and water quantity due to increased water use of the species when compared to annual species, such as traditional row crops. The potential negative effects would be minimized through the use of the mitigation and monitoring plan, described below and in the EA.

3. The Proposed Action would require site specific environmental screening for each producer contract initiated with FSA for inclusion as a producer within the proposed project areas. The environmental screening would identify either the field level resources that would be needed to be avoided or the effects could be minimized through mitigation efforts as described in the EA.

4. The potential beneficial and adverse impacts of implementing the Proposed Action have been fully considered within the EA. No significant adverse direct or indirect effects were identified, based on the resource analyses provided.

5. The Proposed Action would not involve effects to the quality of the human environment that are likely to be highly controversial.

6. The Proposed Action would not establish a precedent for future actions with significant effects and does not represent a decision in principle about a future consideration.

7. The Proposed Action does not result in cumulative significant impacts when considered with other actions that also individually have insignificant impacts. Cumulative impacts of implementing the Proposed Action were determined to be not significant.

8. The Proposed Action would not have adverse effects on threatened or endangered species or designated critical habitat since site specific analyses would be undertaken for each producer contract within each proposed BCAP project area to avoid adverse effects to the protected species.

9. The Proposed Action does not threaten a violation of Federal, State, or local law or requirements imposed for the protection of the environment.

Overview of the Mitigation and Monitoring Plan

To avoid more than minor adverse effects to the human and natural environment, a mitigation and monitoring plan was developed to address each of the resource areas analyzed in detail within the EA. One of the primary components of the mitigation and monitoring plan is producer education. The education component, to be held twice annually for active producers with an orientation program for new producers, outlines best practice standards across an array of resource areas and topics to ensure effective establishment and management of the giant miscanthus fields. In addition to the educational component, producers will be required to submit annual reports to the Project Sponsors detailing many aspects of production and allows for a greater understanding of how this species will grow in a production setting. More specifically, FSA, with cooperation from NRCS, ARS and the project sponsors, is proposing the following mitigation and monitoring measures. The following mitigation and monitoring measures have been developed based on the current literature and in some cases, conservative estimates relating to existing standards for other conservation programs and practices, but not specified to giant miscanthus.

- Biannual producer meetings to discuss new developments in production, management, pest and disease treatment, and eradication.
- New producer orientation to discuss production methods; management activities; potential for spread of giant miscanthus, treatment methods, and responsibilities; pest and disease identification, treatment methods, and responsibilities; eradication methods, if necessary; and reporting requirements.
- Producer Conservation Plans to include site specific best management practices (BMPs), which could include, but not be limited to, NRCS Conservation Practice Standards (CPS) for soil erosion, pesticide use and application, fertilizer use and application, and other relevant areas for each specific site.
- Setbacks and buffers to manage the giant miscanthus stand and to prevent unintentional spread of the giant miscanthus follow all local, state, or Federal regulations for containment of biomass plantings in the existence at the time of development of the producer's conservation plan or through an amendment of the conservation plan initiated by the producer and approved by FSA and NRCS, if determined appropriate for the site-specific conditions. If no such guidance exists, minimum procedures to prevent unintentional spread of giant miscanthus include the following:
  - Establish or maintain a minimum 25 feet of setback or border around a giant miscanthus stand, unless the field is adjacent to existing cropland or actively managed pasture with the same operator.
  - Setback or border areas may be planted to an annual row crop such as corn or soybeans; may be planted to a site-adapted, perennial cool-season or warm-season forage or turf grass; may be kept in existing vegetation; or kept clear by disking, rotovating, or treating with a non-selective burn down herbicide at least once a year. The method used may

be dependent on slope and the potential for erosion.

• Use only the sterile variety of giant miscanthus cultivar known as the "Illinois Clone" within the proposed project areas; all Illinois Clone cultivars must be approved for planting under Aloterra's membership through the Ohio Seed Improvement Association's Quality Assurance program.

• Initiate a seed sampling program to determine the on-going sterility of seeds produced from the acres within the project areas. The seed sampling program includes recommended actions specified in the mitigation and monitoring plan, including eradication, if a seed sample returns viable seed.

• Exclusion of planting giant miscanthus on certain acreage within the project areas, depending upon certain site-specific conditions specified in the mitigation and monitoring plan, like those lands subject to frequest flooding events.

• Develop monitoring program to identify:

(1) Notify both United States Department of Agriculture (USDA) and the project sponsors of any spread of giant miscanthus outside of planted fields as soon as possible after identification of the spread,

(2) Notify the project sponsors of the identification of diseases and pests as soon as possible after identification and;

(3) Include wildlife use or changes in use in the annual producer report specify all; a USDA representative will conduct an annual field visit to monitor the site and to look for potential spread of Miscanthus beyond the site and;

(4) USDA will work with local weed control districts to provide additional monitoring and evaluation of the sites as appropriate.

• Annual producer reporting, to include land use tracking with the average and total size of enrolled fields; prior land use; rationale for land use change; spread of giant miscanthus outside of planted fields; any pests or diseases identification; the use of pesticides or herbicides to control unwanted spread of giant miscanthus or pests or diseases; BMP and CPS incorporated into field management, such as erosion control structures or materials, vegetative barriers, etc.; fertilizer usage and application methods; and cost data.

Determination

In accordance with NEPA and FSA environmental regulations at 7 CFR part 799 that implemented the regulation of the Council on Environmental Quality (40 CFR parts 1500–1508), I find that the Proposed Action and associated mitigation measures do not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, no environmental impact statement will be prepared.

I make these findings and determination today, May 23, 2011, in Washington, DC, effective immediately. This notice will be published on our Web site and in the **Federal Register**.

Signed: May 20, 2011.

Bruce Nelson,

Acting Executive Vice President, Commodity Credit Corporation, and Acting Administrator, Farm Service Agency.

[FR Doc. 2011–13094 Filed 5–25–11; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Pennington County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Pennington County Resource Advisory Committee will meet in Rapid City, SD. 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 of the meetings is to accept, review and approve project proposals for Pennington County.

DATES: The meetings will be held June 21 and June 28, 2011, at 5 p.m.

ADDRESSES: The meetings will be held at the Mystic Ranger District Office at 8221 South Highway 16. Written comments should be sent to Robert J. Thompson, 8221 South Highway 16, Rapid City, SD 57702. Comments may also be sent via e-mail to *rjthompson@fs.fed.us,* or via facsimile to 605–343–7134.

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 the Mystic Ranger District office. Visitors are encouraged to call ahead at 605–343–1567 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Robert J. Thompson, District Ranger, Mystic Ranger District, 605–343–1567. 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: Meetings are open to the public. The following business will be conducted: Accept, review, discussion and approval of project proposals. 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.

Dated: May 18, 2011.

Craig Bobzien,

Forest Supervisor.

[FR Doc. 2011–13045 Filed 5–25–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Funding Availability (NOFA) for Loan Guarantees Under Section 538 Guaranteed Rural Rental Housing Program (GRRHP) for Fiscal Year 2011

AGENCY: Rural Housing Service, USDA.

ACTION: NOFA.

SUMMARY: This is a request for proposals for guaranteed loans under the section 538 Guaranteed Rural Rental Housing Program (GRRHP) pursuant to 7 CFR 3565.4 for Fiscal Year (FY) 2011. The Department of Defense and Full Year Continuing Appropriations Act, 2011 (Pub. L. 112–20) (April 15, 2011) appropriated approximately $31,000,000 to the Agency for FY 2011 funding for the section 538 program. The commitment of program dollars will be made first to approved and complete applications from prior years NOFA, then to applicants of selected responses in the order they are ranked under this NOFA that have fulfilled the necessary requirements for obligation.

Expenses incurred in developing applications will be at the applicant's risk. The following paragraphs outline the timeframes, eligibility requirements, lender responsibilities, and the overall response and application processes.

Eligible lenders are invited to submit responses for new construction and acquisition with rehabilitation of affordable rural rental housing. The Agency will review responses submitted by eligible lenders, on the lender's letterhead, and signed by both the prospective borrower and lender. Although a complete application is not required in response to this NOFA, eligible lenders may submit a complete application concurrently with the response. Submitting a complete application will not have any effect on the respondent's NOFA response score.

DATES: Eligible responses to this NOFA will be accepted per this guidance until

December 30, 2011, 12 p.m. Eastern Time. Selected responses that develop into complete applications and meet all Federal eligibility requirements will receive conditional commitments until all funds are expended. Selected responses to this NOFA that are deemed eligible for further processing after September 30, 2011, will be funded to the extent an appropriation act provides funding for GRRHP for FY 2012 and will be subject to any additional limitations that may be in the FY 2012 NOFA.

Eligible lenders mailing a response or application must provide sufficient time to permit delivery to the *submission address* on or before the closing deadline date and time. Acceptance by a U.S. Post Office or private mailer does not constitute delivery. Postage due responses and applications will not be accepted.

Submission Address: Eligible lenders will send responses to the Multi-family Housing Program Director of the State Office where the project will be located.

USDA Rural Development State Offices, their addresses, and telephone numbers, follow: [this information may also be found at *http://www.rurdev.usda.gov/recd_map.html*].

Note: Telephone numbers listed are not toll-free.

Alabama State Office, 4121 Carmichael Road, Suite 601, Sterling Centre, Montgomery, AL 36106–3683, (334) 279–3400, TDD (334) 279–3495.

Alaska State Office, 800 West Evergreen, Suite 201, Palmer, AK 99645, (907) 761–7740, TDD (907) 761–8905.

Arizona State Office, 230 North First Avenue, Suite 206, Phoenix, AZ 85003–1706, (602) 280–8755, TDD (602) 280–8706.

Arkansas State Office, 700 W. Capitol Avenue, Room 3416, Little Rock, AR 72201–3225, (501) 301–3200, TDD (501) 301–3279.

California State Office, 430 G Street, #4169, Davis, CA 95616–4169, (530) 792–5800, TDD (530) 792–5848.

Colorado State Office, 655 Parfet Street, Room E100, Lakewood, CO 80215, (720) 544–2915, TDD (800) 659–2656.

Connecticut: Served by Massachusetts State Office.

Delaware and Maryland State Office, 1221 College Park Drive, Suite 200, Dover, DE 19904, (302) 857–3580, TDD (302) 857–3585.

Florida & Virgin Islands State Office, 4440 N.W. 25th Place, P.O. Box 147010, Gainesville, FL 32614–7010, (352) 338–3400, TDD (352) 338–3499.

Georgia State Office, Stephens Federal Building, 355 E. Hancock Avenue—Stop 307, Athens, GA 30601–2768, (706) 546–2162, TDD (706) 546–2034.

Hawaii State Office, (Services all Hawaii, American Samoa Guam, and Western Pacific), Room 311, Federal Building, 154 Waianuenue Avenue, Hilo, HI 96720, (808) 933–8380, TDD (808) 933–8321.

Idaho State Office, 9173 West Barnes Drive, Suite A1, Boise, ID 83709, (208) 378–5602, TDD (208) 378–5644.

Illinois State Office, 2118 West Park Court, Suite A, Champaign, IL 61821–2986, (217) 403–6200, TDD (217) 403–6240.

Indiana State Office, 5975 Lakeside Boulevard, Indianapolis, IN 46278–1966, (317) 290–3100 (ext. 4), TDD (317) 290–3343.

Iowa State Office, 210 Walnut Street, Room 873, Des Moines, IA 50273, (515) 284–4663, TDD (515) 284–4858.

Kansas State Office, 1303 SW First American Place, Suite 100, Topeka, KS 66604–4040, (785) 271–2700, TDD (785) 271–2767.

Kentucky State Office, 771 Corporate Drive, Suite 200, Lexington, KY 40503, (859) 224–7300, TDD (859) 224–7422.

Louisiana State Office, 3727 Government Street, Alexandria, LA 71302, (318) 473–7921, TDD (318) 473–7655.

Maine State Office, 967 Illinois Avenue, Suite 4, Bangor, ME 04402–0405, (207) 990–9100 (ext. 4), TDD (207) 942–7331.

Maryland: Served by Delaware State Office.

Massachusetts, Connecticut, & Rhode Island State Office, 451 West Street, Suite 2, Amherst, MA 01002, (413) 253–4300, TDD (413) 253–4590.

Michigan State Office, 3001 Coolidge Road, Suite 200, East Lansing, MI 48823, (517) 324–5190, TDD (517) 324–5169.

Minnesota State Office, 375 Jackson Street, Suite 410, St. Paul, MN 55101–1853, (651) 602–7800, TDD (651) 602–7830.

Mississippi State Office, Federal Building, Suite 831, 100 W. Capitol Street, Jackson, MS 39269, (601) 965–4318, TDD (601) 965–5850.

Missouri State Office, 601 Business Loop 70 West, Parkade Center, Suite 235, Columbia, MO 65203, (573) 876–0976, TDD (573) 876–9480.

Montana State Office, 2229 Boot Hill Court, Bozeman, MT 59715, (406) 585–2540, TDD (406) 585–2562.

Nebraska State Office, Federal Building, Room 152, 100 Centennial Mall N, Lincoln, NE 68508, (402) 437–5551, TDD (402) 437–5093.

Nevada State Office, 1390 South Curry Street, Carson City, NV 89703–9910, (775) 887–1222 (ext. 100), TDD (775) 885–0633.

New Hampshire State Office, 10 Ferry Street, Concord, NH 03301–5004, Suite 218, Box 317, (603) 223–6046, TDD (802) 828–6365.

New Jersey State Office, 8000 Midlantic Drive, 5th Floor North Suite 500, Mt. Laurel, NJ 08054, (856) 787–7700, TDD (856) 787–7730.

New Mexico State Office, 6200 Jefferson Street NE, Albuquerque, NM 87109, (505) 761–4950, TDD (505) 761–4938.

New York State Office, The Galleries of Syracuse, 441 S. Salina Street, Suite 357, Syracuse, NY 13202–2425, (315) 477–6400, TDD (315) 477–6447.

North Carolina State Office, 4405 Bland Road, Suite 260, Raleigh, NC 27609, (919) 873–2000, TDD 711 (state relay system).

North Dakota State Office, Federal Building, Room 208, 220 East Rosser, P.O. Box 1737, Bismarck, ND 58502, (701) 530–2061, TDD (701) 530–2090.

Ohio State Office, Federal Building, Room 507, 200 North High Street, Columbus, OH 43215–2477, (614) 255–2400, TDD (800) 877–8339.

Oklahoma State Office, 100 USDA, Suite 108, Stillwater, OK 74074–2654, (405) 742–1000, TDD (405) 742–1007.

Oregon State Office, 1201 NE. Lloyd Boulevard, Suite 801, Portland, OR 97232–1274, (503) 414–3300, TDD (503) 414–3387.

Pennsylvania State Office, One Credit Union Place, Suite 330, Harrisburg, PA 17110–2996, (717) 237–2299, TDD 711 (state relay system).

Puerto Rico State Office, 654 Munoz Rivera Avenue, Suite 601, San Juan, PR 00918, (787) 766–5095, TDD (787) 766–5332.

Rhode Island: Served by Massachusetts State Office.

South Carolina State Office, Strom Thurmond Federal Building, 1835 Assembly Street, Room 1007, Columbia, SC 29201, (803) 765–5163, TDD (803) 765–5697.

South Dakota State Office, Federal Building, Room 210, 200 Fourth Street, SW., Huron, SD 57350, (605) 352–1100, TDD (605) 352–1147.

Tennessee State Office, 3322 West End Avenue, Suite 300, Nashville, TN 37203, (615) 783–1300, TDD (615) 783–1397.

Texas State Office, Federal Building, Suite 102, 101 South Main, Temple, TX 76501, (254) 742–9700, TDD (254) 742–9712.

Utah State Office, Wallace F. Bennett Federal Building, 125 S. State Street, Room 4438, Salt Lake City, UT 84138, (801) 524–4320, TDD (801) 524–3309.

Vermont State Office, City Center, 3rd Floor, 89 Main Street, Montpelier, VT 05602, (802) 828–6080, TDD (802) 223–6365.

Virgin Islands: Served by Florida State Office.
Virginia State Office, 1606 Santa Rosa Road, Suite 238, Richmond, VA 23229, (804) 287–1500, TDD (804) 287–1753.
Washington State Office, 1835 Black Lake Blvd. SW., Suite B, Olympia, WA 98512, (360) 704–7740, TDD (360) 704–7772.
Western Pacific Territories: Served by Hawaii State Office.
West Virginia State Office, Federal Building, 1550 Earl Core Road, Suite 101, Morgantown, WV 26505, (304) 284–4881, TDD (304) 284–4836.
Wisconsin State Office, 4949 Kirschling Court, Stevens Point, WI 54481, (715) 345–7600, TDD (715) 345–7614.
Wyoming State Office, P.O. Box 11005, Casper, WY 82602, (307) 233–6700, TDD (307) 233–6733.

FOR FURTHER INFORMATION CONTACT: Monica Cole, Financial and Loan Analyst, USDA Rural Development Guaranteed Rural Rental Housing Program, Multi-Family Housing Guaranteed Loan Division, U.S. Department of Agriculture, South Agriculture Building, Room 1263, STOP 0781, 1400 Independence Avenue, SW., Washington, DC 20250–0781. *E-mail: monica.cole@wdc.usda.gov*. *Telephone:* (202) 720–1251. This number is not toll-free. Hearing or speech-impaired persons may access that number by calling the Federal Information Relay Service toll-free at (800) 877–8339.

Overview

Federal Agency: Rural Housing Service.

Solicitation Opportunity Title: Guaranteed Multi-Family Housing Loans.

Announcement Type: Initial Solicitation Announcement.

Catalog of Federal Domestic Assistance: 10.438.

Dates: Response Deadline: December 30, 2011,12 p.m. Eastern Time.

Funding Opportunity Description:

The GRRHP is authorized by section 538 of the Housing Act of 1949, as amended (42 U.S.C. 1490p–2) and operates under 7 CFR part 3565. The GRRHP Origination and Servicing Handbook (HB–1–3565) is available to provide lenders and the general public with guidance on program administration. HB–1–3565, which contains a copy of 7 CFR part 3565 in Appendix 1, can be found at: *http://www.rurdev.usda.gov/regs/Handbooks.html#hbw6*. The purpose of the GRRHP is to increase the supply of affordable rural rental housing through the use of loan guarantees that encourage partnerships between the Agency, private lenders, and public agencies.

Eligibility of Prior Year Selected Notice of Funding Availability Responses

Prior fiscal year response selections that did not develop into complete applications within the time constraints stipulated by the corresponding State Office have been cancelled. Applicants have been notified of the cancellation by the State Office. A new response for the project may be submitted subject to the conditions of this NOFA.

Prior years NOFA responses that were selected by the Agency, with a complete application (including all Federal environmental documents required by 7 CFR part 1940, subpart G, and a Form RD 3565–1 "Application for Loan and Guarantee") submitted by the lender within 90 days from the date of notification of response selection (unless an extension was granted by the Agency), will be eligible for any FY 2011 program dollars without having to complete a FY 2011 response. Outstanding prior years approved applications were obligated to the extent of available funding in order of priority score with the highest scores obligated first. In the case of tied scores, the project with the greatest leveraging (lowest Loan to Cost) received selection priority. Once the outstanding prior years approved applications have been funded, the Agency will select FY 2011 responses for further processing in rank order as determined by the scoring criteria set forth in this NOFA to the extent that funds remain available.

Qualifying Properties: Qualifying properties include new construction for multi-family housing units and the acquisition of existing structures with a minimum per unit rehabilitation expenditure requirement in accordance with 7 CFR 3565.252.

Also eligible is the revitalization, repair and transfer (as stipulated in 7 CFR 3560.406) of existing direct section 515 housing (transfer costs are subject to Agency approval and must be an eligible use of loan proceeds as listed in 7 CFR 3565.205) and properties involved in the Agency's MPR program. Equity payment, as stipulated 7 CFR 3560.406, in the transfer of existing direct section 515 housing, is an eligible use of guaranteed loan proceeds, however the amount of funding available for transfers of existing section 515 properties involving equity payments will be limited to 25 percent of the FY 2011 funding level through August 31, 2011. Once the Agency has committed 25 percent of the total funding available for transfers of existing section 515 properties with equity payments, no further funding will be available for transfers of existing section 515 properties with equity payments until after August 31, 2011, if funding is available. If there is funding available after August 31, 2011, funding requests for transfers of existing 515 properties involving equity payments will be obligated in the order the obligation request was received at the National Office. Funding requests for transfers of existing 515 properties involving equity payments will be kept in a separate queue. The 25 percent limit is solely for equity payments and does not affect 515 properties' use of 538 loans for rehabilitation and repairs. In order to be considered, the transfer of direct section 515 housing and MPR projects must need repairs and undergo revitalization of a minimum of $6,500 per unit.

Eligible Financing Sources: Any form of Federal, state, and conventional sources of financing can be used in conjunction with the loan guarantee, including Home Investment Partnership Program (HOME) grant funds, tax exempt bonds, and low income housing tax credits.

Types Of Guarantees: The Agency offers three types of guarantees which are set forth at 7 CFR 3565.52(c).

The Agency's liability under any guarantee will decrease or increase, in proportion to any decrease or increase in the amount of the unpaid portion of the loan, up to the maximum amount specified in the Loan Note Guarantee. Penalties incurred as a result of default are not covered by any of the program's guarantees. The Agency may provide a lesser guarantee based upon its evaluation of the credit quality of the loan.

Energy Conservation: USDA Rural Development has adopted a policy that all new multi-family housing projects financed in whole or in part by the USDA, will be encouraged to engage in sustainable building development that emphasizes energy-efficiency and conservation. In order to assist in the achievement of this goal, any GRRHP project that participates in one or all of the programs included in priority 6 under the Scoring of Priority Criteria for Selection of Projects section of this NOFA, may receive a maximum of twenty (20) additional points added to their project score. Participation in these nationwide initiatives is voluntary, but strongly encouraged.

Interest Credit: The FY 2011 appropriation act did not fund interest credit.

Surcharges for Guarantee of Construction Advances: There is no

surcharge for the guarantee of construction advances for FY 2011.

Program Fees for FY 2011: As a condition of receiving a loan guarantee, and as provided in 7 CFR 3565.302, the Agency will charge the following fees to the lender responding to the FY 2011 NOFA. The fees are as follows:

(1) No application fee for lenders submitting an application.

(2) No initial guarantee fee for lenders submitting an application.

(3) No annual guarantee fee for lenders submitting an application.

(4) A flat fee of $500 when a lender requested USDA Rural Development to extend the term of a guarantee commitment.

(5) A flat fee of $500 when a lender requested USDA Rural Development to reopen an application when a commitment had expired.

(6) A flat fee of $1,250 when a lender requested USDA Rural Development to approve the transfer of property and assumption of the loan to an eligible prospective borrower.

(7) No lender application fee for lender approval.

Eligibility Information

Eligible Lenders: An eligible lender for the section 538 GRRHP as required by 7 CFR 3565.102 must be a licensed business entity or Housing Finance Agency (HFA) in good standing in the state or states where it conducts business. Lender eligibility requirements are contained in 7 CFR 3565.102. Please review 7 CFR 3565.102 for a complete list of all of the criteria. The Agency will only accept responses from GRRHP eligible or approved lenders as described in 7 CFR 3565.102 and 3565.103 respectively.

GRRHP Lender Approval Application: Lenders whose responses are selected will be notified by the USDA Rural Development to submit a request for GRRHP lender approval application within 30 days of notification. Lenders who request GRRHP approval must meet the standards in the 7 CFR part 3565 and provide the documentation set forth in GRRHP Origination and Servicing Handbook (HB–1–3565) found at *http://www.rurdev.usda.gov/Handbooks.html#hbw6* (and available in any local RD office).

Lenders that have received GRRHP lender approval in the past and are in good standing do not need to reapply for GRRHP lender approval. A lender making a construction loan must demonstrate an ability to originate and service construction loans, in addition to meeting the other requirements of 7 CFR part 3565, subpart C.

Submission of Documentation For GRRHP Lender Approval: All lenders that have not yet received GRRHP lender approval must submit a complete lender application to: Director, Multi-Family Housing Guaranteed Loan Division, Rural Development, U.S. Department of Agriculture, Room 1263, STOP 0781, 1400 Independence Avenue, SW., Washington, DC 20250–0781. Lender applications must be identified as "Lender Application—Section 538 Guaranteed Rural Rental Housing Program" on the envelope.

Discussion of NOFA Response Requirements

Content of NOFA Responses: All responses require lender information and project specific data as set out in this NOFA. Incomplete responses will not be considered for funding. Lenders will be notified of incomplete responses no later than 30 calendar days from the date of receipt of the NOFA response by the Agency. Complete responses are to include a signed cover letter from the lender on the lender's letterhead to the office address identified in the NOFA for the scoring and ranking of a proposed GRRHP project. The lender must provide the requested information concerning the project, to establish the purpose of the proposed project, its location, and how it meets the established priorities for funding. The Agency will determine the highest ranked responses based on priority criteria and a threshold score.

(1) *Lender Certification*—The lender must certify that the lender will make a loan to the prospective borrower for the proposed project, under specified terms and conditions subject to the issuance of the GRRHP guarantee. Lender certification must be on the lender's letterhead and signed by both the lender and the prospective borrower.

(2) *Project Specific Data*—The lender must submit the project specific data below on the lender's letterhead, signed by both the lender and the prospective borrower:

Data element	Information that must be included
Lender Name	Insert the lender's name.
Lender Tax ID #	Insert lender's tax ID #.
Lender Contact Name	Name of the lender contact for loan.
Mailing Address	Lender's complete mailing address.
Phone #	Phone # for lender contact.
Fax #	Insert lender's fax #.
E-mail Address	Insert lender contact e-mail address.
Borrower Name and Organization Type	State whether borrower is a Limited Partnership, Corporation, Indian Tribe, *etc.*
Equal Opportunity Survey	Optional Completion
Tax Classification Type	State whether borrower is for profit, not for profit, *etc.*
Borrower Tax ID #	Insert borrower's tax ID #.
Borrower DUNS #	Insert DUNS number.
Borrower Address, including County	Insert borrower's address and county.
Borrower Phone #, fax number and e-mail address	Insert borrower's phone #, fax number and e-mail address.
Principal or Key Member for the Borrower	Insert name and title. List the general partners if a limited partnership, officers if a corporation or members of a Limited Liability Corporation.
Borrower Information and Statement of Housing Development Experience.	Attach relevant information.
New Construction, Acquisition With Rehabilitation, or the Revitalization, Repair, and Transfer (as stipulated in 7 CFR 3560.406) of Existing Direct Section 515 Housing or MPR.	State whether the project is new construction or acquisition with rehabilitation. Transfer costs, including equity payments, are subject to Agency approval and must be an eligible use of loan proceeds in 7 CFR 3565.205.
Project Location Town or City	Town or city in which the project is located.
Project County	County in which the project is located.
Project State	State in which the project is located.
Project Zip Code	Insert zip code.

Data element	Information that must be included
Project Congressional District	Congressional District for project location.
Project Name	Insert project name.
Project Type	Family, senior (all residents 55 years or older), or mixed.
Property Description and Proposed Development Schedule	Provide as an attachment.
Total Project Development Cost	Enter amount for total project.
# of Units	Insert the # of units in the project.
Ratio of 3–5 bedroom units to total units	Insert percentage of 3–5 bedroom units to total units.
Cost Per Unit	Total development cost divided by # of units.
Rent	Proposed rent structure.
Median Income for Community	Provide median income for the community.
Evidence of Site Control	Attach relevant information.
Description of Any Environmental Issues	Attach relevant information.
Loan Amount	Insert the loan amount.
Borrower's Proposed Equity	Insert amount and source.
Tax Credits	Have tax credits been awarded? If tax credits were awarded, submit a copy of the award NOFA/evidence of award with your response. If not, when do you anticipate an award will be made (announced)? What is the [estimated] value of the tax credits? Letters of application and commitment letters should be included, if available.
Other Sources of Funds	List all funding sources other than tax credits and amounts for each source, type, rates and terms of loans or grant funds.
Loan to Total Development Cost	Guaranteed loan divided by the total development costs of project.
Debt Coverage Ratio	Net Operating Income divided by debt service payments.
Percentage of Guarantee	Percentage guarantee requested.
Collateral	Attach relevant information.
Colonia, Tribal Lands, or	Colonia, on an Indian Reservation, or
State's Consolidated Plan or State Needs Assessment	in a place identified in the State's Consolidated Plan or State Needs Assessment as a high need community for multi-family housing.
Is the Property Located in a Federally Declared Disaster Area	If yes, please provide documentation (*i.e.,* Presidential Declaration document).
Population	Provide the population of the county, city, or town where the project is or will be located.
What type of guarantee is being requested, Permanent only (Option 1), Construction and Permanent (Option 2) or Continuous (Option 3)?.	Enter the type of guarantee.
Loan Term	Minimum 25-year term. Maximum 40-year term (includes construction period). May amortize up to 40 years. Balloon mortgages permitted after the 25th year.

(3) *The Proposed Borrower*

(a) Lender certification that the borrower or principals of the owner are not barred from participating in Federal housing programs and are not delinquent on any Federal debt.

(b) Borrower's unaudited or audited financial statements.

(c) Statement of borrower's housing development experience.

(4) *Lender Eligibility and Approval Status*

Evidence that the lender is either an approved lender for the purposes of the GRRHP or that the lender is eligible to apply for approved lender status. The lender's application for approved lender status can be submitted with the response but must be submitted to the National Office within 30 calendar days of the lender's receipt of the "Notice to Proceed with Application Processing" letter.

(5) *Competitive Criteria*

Information that shows how the proposal is responsive to the selection criteria specified in the NOFA.

Response Review Information

Scoring of Priority Criteria for Selection of Projects: All 2011 responses will be scored based on the criteria set forth below to establish their priority for being selected for further processing. Per 7 CFR 3565.5 (b), priority will be given to projects: in smaller rural communities, in the most needy communities having the highest percentage of leveraging, having the lowest interest rate, or having the highest ratio of 3–5 bedroom units to total units. In addition, priority points will be given for projects involved in the Agency's MPR or projects that are participating in specified energy efficient programs.

The six priority scoring criteria for projects are listed below.

Priority 1—Projects located in eligible rural communities with the lowest populations will receive the highest points.

Population size	Points
0—5,000	20
5,001—10,000 people	15
10,001—15,000 people	10
15,001—20,000 people	5

Priority 2—The neediest communities as determined by the median income from the most recent census data published by the United States Department of Housing and Urban Development ("HUD"), will receive points. The Agency will allocate points to projects located in communities having the lowest median income. Points for median income will be awarded as follows:

Median income (dollars)	Points
Less than $45,000	20
$45,000—less than $55,000	15
$55,000—less than $65,000	10
$65,000—less than $75,000	5
$75,000 or more	0

Priority 3—Projects that demonstrate partnering and leveraging in order to develop the maximum number of units

and promote partnerships with state and local communities will also receive points. Points will be awarded as follows:

Loan to total development cost ratio (percentage %)	Points
Less than 50	30
Less than 70—50	10
70 or more	0

Priority 4—The USDA Rural Development will award points to projects with the highest ratio of 3–5 bedroom units to total units as follows:

Ratio of 3–5 bedroom units to total units	Points
More than 50%	10
21%—50%	5
Less than 21%-more than 0%	1

Priority 5—NOFA responses for the revitalization, repair, and transfer (as stipulated in 7 CFR 3560.406) of existing direct section 515 housing and properties involved in the Agency's MPR program (transfer costs, including equity payments, are subject to Agency approval and must be an eligible use of loan proceeds listed in 7 CFR 3565.205) will receive an additional 10 points.

Priority 6—Projects that are energy-efficient and certified by the following programs will receive twenty (20) additional points:

(1) Green Communities sponsored by The Enterprise Foundation (*http://www.enterprisefoundation.org*) or

(2) LEED for Homes Program by the U.S. Green Builders (USGBC) (*http://www.usgbc.org*) or

(3) National Association of Home Builders (NAHB) ICC 700–2008 National Green Building Standard ™ (*http://www.nahb.org*) or

(4) Any other program, specific to a state or region that is similar to the above three and is approved by the Agency.

Notifications: Responses will be reviewed for completeness and eligibility. The USDA Rural Development will notify those lenders whose responses are selected via a Notice to Proceed with Application Processing letter. The USDA Rural Development will request lenders without GRRHP lender approval to apply for GRRHP lender approval within 30 days upon receipt of notification of selection.

Lenders will also be invited to submit a complete application to the USDA Rural Development State Office where the project is located.

Submission of GRRHP Applications: Notification letters will instruct lenders to contact the USDA Rural Development State Office immediately following notification of selection to schedule required agency reviews.

USDA Rural Development State Office staff will work with lenders in the development of an application package. The deadline for the submission of a complete application is 90 days from the date of notification of response selection. If the application is not received by the appropriate State Office within 90 days from the date of notification, the selection is subject to cancellation, thereby allowing another response that is ready to proceed with processing to be selected. The Agency may extend this 90-day deadline for receipt of an application at its own discretion.

Award Administration Information

Obligation of Program Funds: The Agency will only obligate funds to projects that meet the requirements for obligation under 7 CFR part 3565 and this NOFA, including having undergone a satisfactory environmental review in accordance with the National Environmental Protection Act (NEPA) and completed Form RD 3565–1 for the selected project.

The Agency will prioritize the obligation requests using the highest score and the procedures outlined as follows. The Agency will select the responses that meet eligibility criteria and invite lenders to submit complete applications to the Agency. Once a complete application is received and approved, the Agency's State Office will submit a request to obligate funds to the Agency's National Office. Starting on the Friday following the date the annual appropriation bill has passed, obligation requests submitted to the National Office will be accumulated, but not obligated throughout the week until midnight Eastern Time every Thursday. To the extent that funds remain available, the Agency will obligate the requests accumulated through the weekly request deadline of the previous week by the following Tuesday (*i.e.,* requests received from Friday, May 13, 2011, to Thursday, May 19, 2011, will be obligated by Tuesday, May 24, 2011). In the event of a tie, priority will be given to the request for the project that: 1st—has the highest percentage of leveraging (lowest Loan to Cost) and in the event there is still a tie;—is in the smaller rural community.

Conditional Commitment: Once the required documents for obligation are received and all NEPA and regulatory requirements have been met, the USDA Rural Development State Office will issue a conditional commitment, which stipulates the conditions that must be fulfilled before the issuance of a guarantee, in accordance with 7 CFR 3565.303.

Issuance of Guarantee: The USDA Rural Development Office will issue a guarantee to the lender for a project in accordance with 7 CFR 3565.303. No guarantee can be issued without a complete application, review of appropriate certifications, satisfactory assessment of the appropriate level of environmental review, and the completion of any conditional requirements.

Non-Discrimination Statement

USDA prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, *etc.*) should contact USDA's Target Center at (202) 720–2600 (voice and TDD).

To file a complaint of discrimination, write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW., Washington, DC 20250–9410, or call (800) 795–3272 (voice), or (202) 720–6382 (TDD). "USDA is an equal opportunity provider, employer, and lender."

Dated: May 18, 2011.

Tammye H. Treviño,

Administrator, Rural Housing Service.

[FR Doc. 2011–13012 Filed 5–25–11; 8:45 am]

BILLING CODE 3410–XV–P

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

Senior Executive Service Performance Review Board

AGENCY: Chemical Safety and Hazard Investigation Board.

ACTION: Notice.

SUMMARY: This notice announces a change in the membership of the Senior Executive Service Performance Review Board for the Chemical Safety and Hazard Investigation Board (CSB).

DATES: Effective May 26, 2011.

FOR FURTHER INFORMATION CONTACT: John Lau, Human Resources Director, (202) 261–7600.

SUPPLEMENTARY INFORMATION: 5 U.S.C. 4314(c)(1) requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, a performance review board (PRB). The PRB reviews initial performance ratings of members of the Senior Executive Service (SES) and makes recommendations as to final annual performance ratings for senior executives. Because the CSB is a small independent Federal agency, the SES members of the CSB's PRB are drawn from other Federal agencies.

The Chairperson of the CSB has appointed the following individual to the CSB Senior Executive Service Performance Review Board:

PRB Member—Mary Johnson, General Counsel, National Mediation Board.

Ms. Johnson replaces Gary L. Halbert (previously General Counsel, National Transportation Safety Board). The service of Mr. Halbert on the PRB has come to a close. His appointment was originally announced in the **Federal Register** of January 8, 2010 (75 FR 1028).

William B. Wark (CSB Board Member) continues to serve as the Chair of the PRB, as announced in the **Federal Register** of November 15, 2007 (72 FR 64192). David Capozzi (Executive Director, United States Access Board) continues to serve as a Member of the PRB, as announced in the **Federal Register** of December 5, 2008 (73 FR 74138).

This notice is published in the **Federal Register** pursuant to the requirement of 5 U.S.C. 4314(c)(4).

Dated: May 17, 2011.

Rafael Moure-Eraso,

Chairperson.

[FR Doc. 2011–13041 Filed 5–25–11; 8:45 am]

BILLING CODE 6350–01–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Emerging Technology and Research Advisory Committee; Notice of Partially Closed Meeting

The Emerging Technology and Research Advisory Committee (ETRAC) will meet on June 16 and 17, 2011, 8:30 a.m., Room 3884, at the Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration on emerging technology and research activities, including those related to deemed exports.

Agenda

Thursday, June 16

Open Session

1. Welcome and Introductions.
2. Member Discussion Methodology Options for Identifying Emerging Technologies.
3. Public Comments.

Closed Session

Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3).

Friday, June 17

Open Session

1. Member Discussion Methodology Options for Identifying Emerging Technologies.
2. RPTAC–CEEC Presentation
3. Public Comments

Closed Session

Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3).

The open sessions will be accessible via teleconference to 20 participants on a first come, first serve basis. To join the conference, submit inquiries to Ms. Yvette Springer at *Yvette.Springer@bis.doc.gov* no later than, June 9, 2011.

A limited number of seats will be available for the public session. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate the distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting to Ms. Springer via e-mail.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on May 13, 2011, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended, that the portion of the meeting dealing with matters the of which would be likely to frustrate significantly implementation of a proposed agency action as described in 5 U.S.C. 552b(c)(9)(B) shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information, call Yvette Springer at (202) 482–2813.

Dated: May 20, 2011.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 2011–13007 Filed 5–25–11; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

President's Export Council; Subcommittee on Export Administration; Notice of Open Meeting

The President's Export Council Subcommittee on Export Administration (PECSEA) will meet on June 9, 2011, 9 a.m., at the U.S. Department of Commerce, Herbert C. Hoover Building, Room 3884, 14th Street, between Pennsylvania and Constitution Avenues, NW., Washington, DC. The PECSEA provides advice on matters pertinent to those portions of the Export Administration Act, as amended, that deal with United States policies of encouraging trade with all countries with which the United States has diplomatic or trading relations and of controlling trade for national security and foreign policy reasons.

Agenda

1. Opening remarks by the Chairman.
2. Opening remarks by the Bureau of Industry and Security.
3. Presentation of papers or comments by the public.
4. Working group reports.
5. Export Control Reform Update.

The open session will be accessible via teleconference to 20 participants on a first come, first serve basis. To join the conference, submit inquiries to Ms. Yvette Springer at *Yvette.Springer@bis.doc.gov* no later than June 2, 2011.

A limited number of seats will be available for the public session. Reservations are not accepted. To the extent time permits, members of the public may present oral statements to the PECSEA. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to PECSEA members, the PECSEA suggests that public presentation materials or comments be forwarded before the meeting to Ms. Yvette Springer at *Yvette.Springer@bis.doc.gov.*

For more information, contact Yvette Springer on 202–482–2813.

Dated: May 20, 2011.

Kevin J. Wolf,

Assistant Secretary for Export Administration.

[FR Doc. 2011–13005 Filed 5–25–11; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–848]

Freshwater Crawfish Tail Meat From the People's Republic of China: Amended Final Results of Antidumping Duty Administrative Review in Accordance With Final Court Decision

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

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

SUMMARY: On February 14, 2011, the United States Court of Appeals for the Federal Circuit ("CAFC") affirmed the United States Court of International Trade ("CIT") decision sustaining the Department of Commerce ("Department") redetermination on remand of the 2005–2006 administrative review of freshwater crawfish tail meat ("crawfish tail meat") from the People's Republic of China ("PRC").[1] In this redetermination the Department applied total adverse facts available ("AFA") and assigned the respondent, Xuzhou Jinjiang Foodstuffs Co., Ltd. ("Xuzhou"), an AFA rate of 188.52 percent. As there is now a final and conclusive court decision, the Department is amending its final results.

FOR FURTHER INFORMATION CONTACT: Rebecca Pandolph or Jeffrey Pedersen, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3627 and (202) 482–2769, respectively.

SUPPLEMENTARY INFORMATION: On April 15, 2008, the Department published its final results of the antidumping duty administrative review of crawfish tail meat from the PRC covering the period September 1, 2005, through August 31, 2006.[2] In the *2005–2006 Final Results,* the Department found that Xuzhou failed to report all of its U.S. sales of subject merchandise and assigned Xuzhou the highest rate in the proceeding as total AFA, *i.e.,* the PRC-wide rate of 223.01 percent. The surety to an importer of subject merchandise from Xuzhou during the 2005–2006 period of review, Washington International Insurance Company ("Washington International") challenged the *2005–2006 Final Results* and moved for judgment upon the agency record.

On July 29, 2009, the CIT remanded the case for the Department to reconsider whether circumstances warranted partial or total AFA and for redetermination of an AFA rate that more closely reflected Xuzhou's then-current market practices during the period of review.[3]

In its remand redetermination, dated October 26, 2009, the Department continued to find that total AFA was warranted because there were such extensive omissions in the submitted data that Xuzhou's information on the record could not serve as a reasonably accurate, reliable basis for reaching a determination. However, the Department revised the AFA rate for Xuzhou to 188.52 percent.

On February 9, 2010, the CIT sustained the Department's remand redetermination, affirming both the application of total AFA and the revised AFA rate for Xuzhou.[4]

Consistent with the CAFC decision in *Timken Co.* v. *United States,* 893 F.2d 337 (Fed. Cir. 1990), the Department published in the **Federal Register** a notice of a court decision that is not "in harmony" with the Department's final determination.[5] In this notice, the Department stated that it would amend the *2005–2006 Final Results* upon a final and conclusive court decision in this action.

On April 7, 2010, Washington International filed an appeal of the CIT's decision affirming the Department's remand results. On February 14, 2011, the CAFC affirmed the CIT's decision under CAFC Rule 36, which allows the Court to enter judgment of affirmance without written opinion. The period for appeal expired on May 16, 2011.

Accordingly, the Department is amending its *2005–2006 Final Results.*

Amended Final Results of Review

Because there is now a final and conclusive decision in the Court proceeding, the Department is amending the final results of the 2005–2006 antidumping duty administrative review of crawfish tail meat from the PRC to reflect the revised AFA margin of 188.52 percent for Xuzhou for the period September 1, 2005, through August 31, 2006.

Assessment

The cash deposit rate for Xuzhou will continue to be the company-specific rate established for the company in the subsequent and most recent period during which it was reviewed. *See Freshwater Crawfish Tail Meat From the People's Republic of China: Final Results of Antidumping Duty Administrative and New-Shipper Reviews,* 75 FR 79337 (December 20, 2010). The Department intends to issue liquidation instructions to U.S. Customs and Border Protection 15 days after publication of these amended final results in the **Federal Register**.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended.

Dated: May 20, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–13099 Filed 5–25–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–802]

Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results of Antidumping Duty Changed Circumstances Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce ("Department") has determined that Viet I-Mei Frozen Foods Co., Ltd. ("Viet I-Mei") is the successor-in-interest to Grobest & I-Mei Industrial (Vietnam) Co., Ltd. ("Grobest & I-Mei"), and should be accorded the same antidumping duty treatment as the original company, Grobest & I-Mei for purposes of the antidumping duty order on frozen warmwater shrimp ("shrimp") from the Socialist Republic of Vietnam ("Vietnam").

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[1] *See Washington International Insurance Company* v. *United States,* Court No. 08–CV–0156, United States Court of Appeals for the Federal Circuit (Fed. Cir. February 14, 2011) (Rule 36 affirmance) ; *see also Washington International Insurance Company* v. *United States,* Court No. 08–00156, Slip Op. 10–16 (CIT February 9, 2010) ("*Washington Int'l Insurance Co.,* Slip Op. 10–16").

[2] *See Freshwater Crawfish Tail Meat From the People's Republic of China: Final Results and Partial Rescission of the 2005–2006 Antidumping Duty Administrative Review and Rescission of 2005–2006 New Shipper Reviews,* 73 FR 20249 (April 15, 2008) ("*2005–2006 Final Results*").

[3] *See Washington International Insurance Company* v. *United States,* Court No. 08–00156, Slip Op. 09–78 (CIT July 29, 2009).

[4] *See Washington Int'l Insurance Co.,* Slip Op. 10–16.

[5] *See Freshwater Crawfish Tail Meat From the People's Republic of China: Notice of Decision of the Court of nternational Trade Not in Harmony,* 75 FR 16427 (April 1, 2010).

DATES: *Effective Date:* May 26, 2011

FOR FURTHER INFORMATION CONTACT: Toni Dach, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1655.

Background

On February 1, 2005, the Department published in the **Federal Register** the antidumping duty order for frozen warmwater shrimp from Vietnam. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam,* 70 FR 5152, 5154–55 (February 1, 2005) ("*Order*"). As a part of the first new shipper review of shrimp from Vietnam, Grobest & I-Mei received a separate antidumping duty cash deposit rate of zero. *See Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results of the First Antidumping Duty Administrative Review and First New Shipper Review,* 72 FR 52052 (September 12, 2007).

On February 28, 2011, Viet I-Mei requested that the Department conduct a changed circumstances review, claiming that it is the successor-in-interest to Grobest & I-Mei. On April 12, 2011, the Department initiated the changed circumstances review of Grobest & I-Mei and preliminarily determined that Viet I-Mei was the successor-in-interest to Grobest & I-Mei. *See Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Initiation and Preliminary Results of Changed Circumstances Review,* 76 FR 20318 (April 12, 2011) ("*Preliminary Results*"*).* In the *Preliminary Results,* the Department invited interested parties to comment. *See Preliminary Results.* We received no comments or requests for a hearing from interested parties.

Scope of the Order

The scope of the order includes certain warmwater shrimp and prawns, whether frozen, wild-caught (ocean harvested) or farm-raised (produced by aquaculture), head-on or head-off, shell-on or peeled, tail-on or tail-off,[1] deveined or not deveined, cooked or raw, or otherwise processed in frozen form.

The frozen warmwater shrimp and prawn products included in the scope of this order, regardless of definitions in the Harmonized Tariff Schedule of the United States ("HTS"), are products which are processed from warmwater shrimp and prawns through freezing and which are sold in any count size.

The products described above may be processed from any species of warmwater shrimp and prawns. Warmwater shrimp and prawns are generally classified in, but are not limited to, the *Penaeidae* family. Some examples of the farmed and wild-caught warmwater species include, but are not limited to, whiteleg shrimp (*Penaeus vannemei*), banana prawn *(Penaeus merguiensis*), fleshy prawn (*Penaeus chinensis*), giant river prawn (*Macrobrachium rosenbergii*), giant tiger prawn (*Penaeus monodon*), redspotted shrimp *(Penaeus brasiliensis*), southern brown shrimp (*Penaeus subtilis*), southern pink shrimp (*Penaeus notialis*), southern rough shrimp (*Trachypenaeus curvirostris*), southern white shrimp (*Penaeus schmitti*), blue shrimp (*Penaeus stylirostris*), western white shrimp (*Penaeus occidentalis*), and Indian white prawn (*Penaeus indicus*).

Frozen shrimp and prawns that are packed with marinade, spices or sauce are included in the scope of this order. In addition, food preparations (including dusted shrimp), which are not "prepared meals," that contain more than 20 percent by weight of shrimp or prawn are also included in the scope of this order.

Excluded from the scope are: (1) Breaded shrimp and prawns (HTS subheading 1605.20.10.20); (2) shrimp and prawns generally classified in the *Pandalidae* family and commonly referred to as coldwater shrimp, in any state of processing; (3) fresh shrimp and prawns whether shell-on or peeled (HTS subheadings 0306.23.00.20 and 0306.23.00.40); (4) shrimp and prawns in prepared meals (HTS subheading 1605.20.05.10); (5) dried shrimp and prawns; (6) canned warmwater shrimp and prawns (HTS subheading 1605.20.10.40); and (7) certain battered shrimp. Battered shrimp is a shrimp-based product: (1) That is produced from fresh (or thawed-from-frozen) and peeled shrimp; (2) to which a "dusting" layer of rice or wheat flour of at least 95 percent purity has been applied; (3) with the entire surface of the shrimp flesh thoroughly and evenly coated with the flour; (4) with the non-shrimp content of the end product constituting between four and 10 percent of the product's total weight after being dusted, but prior to being frozen; and (5) that is subjected to individually quick frozen ("IQF") freezing immediately after application of the dusting layer. When dusted in accordance with the definition of dusting above, the battered shrimp product is also coated with a wet viscous layer containing egg and/or milk, and par-fried.

The products covered by this order are currently classified under the following HTS subheadings: 0306.13.00.03, 0306.13.00.06, 0306.13.00.09, 0306.13.00.12, 0306.13.00.15, 0306.13.00.18, 0306.13.00.21, 0306.13.00.24, 0306.13.00.27, 0306.13.00.40, 1605.20.10.10, and 1605.20.10.30. These HTS subheadings are provided for convenience and for customs purposes only and are not dispositive, but rather the written description of the scope of this order is dispositive.

Final Results of Changed Circumstances Review

For the reasons stated in the *Preliminary Results* (which we incorporate herein by reference), and because the Department did not receive any comments on the *Preliminary Results* of this review, the Department continues to find that Viet I-Mei is the successor-in-interest to Grobest & I-Mei, for purposes of the antidumping duty cash-deposit rate. Accordingly, Viet I-Mei should receive the same antidumping duty treatment as Grobest & I-Mei.

Notification

The Department will instruct U.S. Customs and Border Protection that the cash deposit determination from this changed circumstances review will apply to all shipments of the subject merchandise produced and exported by Viet I-Mei Frozen Foods Co., Ltd. entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this changed circumstances review. This deposit rate shall remain in effect until further notice.

This notice also serves as a reminder to parties subject to administrative protective orders ("APOs") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.306. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This notice is published in accordance with sections 751(b)(1) and 777(i) of the Tariff Act of 1930, as amended, and 19 CFR 351.216.

[1] "Tails" in this context means the tail fan, which includes the telson and the uropods.

Dated: May 19, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–13105 Filed 5–25–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–967]

Aluminum Extrusions from the People's Republic of China: Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

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

SUMMARY: Based on affirmative final determinations by the Department of Commerce (the "Department") and the International Trade Commission ("ITC"), the Department is issuing an antidumping duty order on aluminum extrusions from the People's Republic of China ("PRC"). On May 13, 2010, the ITC notified the Department of its affirmative determination of material injury by reason of imports of certain aluminum extrusions from the PRC, and its negative determination of material injury, threat of material injury, or that the establishment of an industry is not materially retarded by reason of imports of finished heats sinks from the PRC.

FOR FURTHER INFORMATION CONTACT: Paul Stolz or Eugene Degnan, 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) 482–0414, respectively.

SUPPLEMENTARY INFORMATION: In accordance with sections 735(d) and 777(i)(1) of the Tariff Act of 1930, as amended ("Act"), the Department published the final determination of sales at less than fair value in the antidumping investigation of aluminum extrusions from the PRC. *See Aluminum Extrusions From the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 76 FR 18524 (April 4, 2011) ("*Final Determination*"); *see also Aluminum Extrusions From the People's Republic of China: Notice of Correction to the Final Determination of Sales at Less Than Fair Value,* 76 FR 20627 (April 13, 2011).

Revision of Scope

On April 4, 2011, the Department published its affirmative final determination in the investigation. *See Final Determination.* On May 13, 2011, the ITC notified the Department of its affirmative finding of injury with respect to imports of certain aluminum extrusions from the PRC and its negative injury finding with respect to imports of finished heat sinks from the PRC. *See Aluminum Extrusions from China* (Investigation No. 731–TA–1177 (Final), USITC Publication 4229 (May 2011)). Therefore, the Department is revising the scope of the subject merchandise stated in the *Final Determination* to exclude finished heat sinks from the scope of the order. In its instructions to the investigation questionnaire, the ITC described heat sinks as a subset of aluminum extrusions typically used in electronic equipment as a thermal controlling tool and stated that they are usually referred to as (1) heat sink blanks, (2) fabricated heat sinks, or (3) finished heat sinks.[1] Heat sink blanks are the full length aluminum extrusions used to produce finished heat sinks. These are generally the pre-fabricated, pre-tested inputs in the production of heat sinks (post any stretching or aging processes applied). Fabricated heat sinks are generally understood to be any heat sink blank that has been cut-to-length, precision machined, and or otherwise fabricated to the end product specifications, but not yet tested, assembled onto other materials, or packaged. Finished heat sinks differ from fabricated heat sinks in that they have been fully, albeit not necessarily individually, tested and assured to comply with the required thermal performance end-use specifications. Only finished heat sinks are excluded from the scope of the order.[2] *See Scope of the Order,* below.

Scope of the Order

The merchandise covered by the order 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,

[1] *See INSTRUCTION BOOKLET: GENERAL INFORMATION, INSTRUCTIONS, AND DEFINITIONS FOR COMMISSION QUESTIONNAIRES Aluminum Extrusions from China Inv. Nos. 701–TA–475 and 731–TA–1177 (Final)* at 6–7, located at: *http://www.usitc.gov/trade_remedy/731_ad_701_cvd/investigations/2010/aluminum_extrusions/final/PDF/_Instructions_US.pdf.*

[2] *See id.*

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, door thresholds, carpet trim, or heat sinks (that do not meet the finished heat sink exclusionary language below). 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 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.

Also excluded from the scope of this order are finished heat sinks. Finished heat sinks are fabricated heat sinks made from aluminum extrusions the design and production of which are organized around meeting certain specified thermal performance requirements and which have been fully, albeit not necessarily individually, tested to comply with such requirements.

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 is dispositive.

Antidumping Duty Order

On May 13, 2011, in accordance with section 735(d) of the Act, the ITC notified the Department of its final determination in the investigation. In its determination, the ITC did not find material injury with respect to finished heat sinks. However, the ITC did find material injury with respect to all other aluminum extrusions from the PRC.

Because the ITC determined that imports of aluminum extrusions (with the exception of finished heat sinks) from the PRC are materially injuring a U.S. industry, all unliquidated entries of such merchandise from the PRC, entered or withdrawn from warehouse, are subject to the assessment of antidumping duties.

Therefore, in accordance with section 736(a)(1) of the Act, the Department will direct U.S. Customs and Border Protection ("CBP") to assess, upon further instruction by the Department, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price (or constructed export price) of the merchandise, minus the amounts determined to constitute export subsidies for all relevant entries of aluminum extrusions from the PRC. These antidumping duties will be assessed on unliquidated entries from the PRC entered, or withdrawn from the warehouse, for consumption on or after November 12, 2010, the date on which the Department published its preliminary determination. *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*").

Termination of Suspension of Liquidation for Finished Heat Sinks

Because the ITC made a negative determination with respect to finished heat sinks, the Department will direct CBP to terminate the suspension of liquidation for entries of finished heat sinks from the PRC that were either entered or withdrawn from warehouse for consumption, and to release any bond or other security, and refund any cash deposit, posted to secure the payment of estimated antidumping duties.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we will instruct CBP to suspend liquidation on all entries of subject merchandise from the PRC. We will also instruct CBP to require cash deposits equal to the estimated amount by which the normal value exceeds the U.S. price as indicated in the chart below. These instructions suspending liquidation will remain in effect until further notice.

Additionally, in the countervailing duty ("CVD") order, the Department

determined that the products under investigation, exported by the Guang Ya Group [3] and New Zhongya,[4] benefitted from an export subsidy. Therefore, for subject merchandise exported by the Guang Ya Group and New Zhongya, we will instruct CBP to reduce the Guang Ya Group and New Zhongya's dumping margin by the simple average of the amounts determined to constitute export subsidies for the Guang Ya Group and New Zhongya (0.26 percent) in the CVD order, published concurrently with this notice.

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 order (42.16 percent), published concurrently with this notice.

Accordingly, effective on the date of publication of the ITC's final affirmative injury determination, CBP will require, at the same time as importers would normally deposit estimated duties on this subject merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margins as discussed above. *See* section 735(c)(3) of the Act. The "PRC-wide" rate applies to all exporters of subject merchandise not specifically listed.

Gap Period

Section 733(d) of the Act states that instructions issued pursuant to an affirmative preliminary determination may not remain in effect for more than four months except where exporters representing a significant proportion of exports of the subject merchandise request the Department to extend that four-month period to no more than six months. At the request of the exporters that account for a significant proportion of exports of aluminum extrusions from the PRC, we extended the four-month period to no more than six months. See Letter from the Guang Ya Group (November 1, 2010). In the underlying investigation, the Department published the *Preliminary Determination* on November 12, 2010. *See Preliminary Determination,* 75 FR 69403. Therefore, the six-month period beginning on the date of the publication of the *Preliminary Determination* ended on May 11, 2011. Furthermore, section 737(b) of the Act states that definitive duties are to begin on the date of publication of the ITC's final injury determination.

Therefore, in accordance with section 733(d) of the Act and our practice, we will instruct CBP to terminate the suspension of liquidation and to liquidate, without regard to antidumping duties, unliquidated entries of aluminum extrusions from the PRC entered, or withdrawn from warehouse, for consumption after May 11, 2011, the date provisional measures expired, and through the day preceding the date of publication of the ITC's final injury determination in the **Federal Register**. Suspension of liquidation will resume on and after the date of publication of the ITC's final injury determination in the **Federal Register**.

The weighted-average dumping margins 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
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

[3] Guang Ya Aluminium Industries Co., Ltd., Foshan Guangcheng Aluminium Co., Ltd., Kong Ah International Company Limited, and Guang Ya Aluminium Industries (Hong Kong) Limited, (collectively, the "Guang Ya Group").

[4] Zhaoqing New Zhongya Aluminum Co., Ltd., Zhongya Shaped Aluminium (HK) Holding Limited and Karlton Aluminum Company Ltd. (collectively "New Zhongya").

Exporter	Producer	Weighted-average margin
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 Aluminum & Stainless Steel Product Co., Ltd. (“Xinya”) did not export subject merchandise to the United States during the period of investigation, for the final determination, Xinya is not being considered for a separate rate.

This notice constitutes the antidumping duty order with respect to aluminum extrusions from the PRC pursuant to section 736(a) of the Act. Interested parties may contact the Department’s Central Records Unit, Room 7046 of the main Commerce building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act and 19 CFR 351.211.

Dated: May 20, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–13086 Filed 5–25–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–968]

Aluminum Extrusions From the People’s Republic of China: Countervailing Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

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

SUMMARY: Based on affirmative final determinations by the Department of Commerce (the “Department”) and the International Trade Commission (“ITC”), the Department is issuing a countervailing duty order on aluminum extrusions from the People’s Republic of China (“PRC”).

FOR FURTHER INFORMATION CONTACT: John Conniff, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: 202/482–1009.

Case History: On April 4, 2011, the Department published its final determination in the countervailing duty investigation of aluminum extrusions from the PRC. *See Aluminum Extrusions From the People’s Republic of China: Final Affirmative Countervailing Duty Determination,* 76 FR 18521, (April 4, 2011) (*Final Determination*).

On May 13, 2010, the ITC notified the Department of its affirmative determination of material injury by reason of imports of certain aluminum extrusions from the PRC, and its negative determination of material injury, threat of material injury, or that the establishment of an industry is not materially retarded by reason of imports of finished heat sinks from the PRC. *See Aluminum Extrusions from China* (Investigation No. 731–TA–1177, USITC Publication 4229 (May 2011) (*ITC Final Determination*)).

Revision of Scope

On April 4, 2011, the Department published its affirmative final determination in this proceeding. *See Final Determination.* On May 13, 2011, the ITC notified the Department of its affirmative finding of injury with respect to imports of certain aluminum extrusions from the PRC and its negative injury finding with respect to imports of finished heat sinks from the PRC. Therefore, the Department is revising the scope of the subject merchandise stated in the final determination to exclude finished heat sinks from the scope of the order. In its instructions to the investigation questionnaire, the ITC described heat sinks as a subset of aluminum extrusions typically used in electronic equipment as a thermal controlling tool and stated that they are usually referred to as (1) heat sink blanks, (2) fabricated heat sinks, or (3) finished heat sinks.[1] Heat sink blanks are the full length aluminum extrusions used to produce finished heat sinks. These are generally the pre-fabricated, pre-tested inputs in the production of heat sinks (post any stretching or aging processes applied). Fabricated heat sinks are generally understood to be any heat sink blank that has been cut-to-length, precision machined, and or otherwise fabricated to the end product specifications, but not yet tested, assembled onto other materials, or packaged. Finished heat sinks differ from fabricated heat sinks in that they have been fully, albeit not necessarily individually, tested and assured to comply with the required thermal performance end-use specifications. Only finished heat sinks are excluded from the scope of the order.[2] *See Scope of the Order,* below.

Scope of the Order

The merchandise covered by this order 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

[1] *See INSTRUCTION BOOKLET: GENERAL INFORMATION, INSTRUCTIONS, AND DEFINITIONS FOR COMMISSION QUESTIONNAIRES* Aluminum Extrusions from China Inv. Nos. 701–TA–475 and 731–TA–1177 (Final) at 6–7, located at: *http://www.usitc.gov/trade_remedy/731_ad_701_cvd/investigations/2010/aluminum_extrusions/final/PDF/_Instructions_US.pdf.*

[2] *See id.*

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, door thresholds, carpet trim, or heat sinks (that do not meet the finished heat sink exclusionary language below). 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 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. Also excluded from the scope of this order are finished heat sinks. Finished heat sinks are fabricated heat sinks made from aluminum extrusions the design and production of which are organized around meeting certain specified thermal performance requirements and which have been fully, albeit not necessarily individually, tested to comply with such requirements.

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 of the order is dispositive.

Countervailing Duty Order

On September 7, 2010, the Department published its *Preliminary Determination* and instructed U.S. Customs and Border Protection ("CBP") to suspend liquidation of all entries of subject merchandise entered or withdrawn from warehouse, for consumption, on or after 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*). In accordance with section 703(d) of the Tariff Act of 1930, as amended ("the Act"), which states that the suspension of liquidation pursuant to a preliminary determination may not remain in effect for more than four months, the Department terminated suspension of liquidation effective January 6, 2011.

On April 4, 2011, the Department published its final determination in the countervailing duty investigation of aluminum extrusions from the PRC. *See Final Determination.* On May 13, 2011, in accordance with section 705(d) of the Act, the ITC notified the Department of its final determination that the industry in the United States producing aluminum extrusions is materially injured within the meaning of section 705(b)(1)(A)(i) of the Act by reason of subsidized imports of aluminum extrusions from the PRC. *See ITC Final Determination.*

In accordance with section 706(a)(1) of the Act, the Department will direct CBP to reinstitute suspension of liquidation effective the date of publication of the ITC final determination in the **Federal Register**. The Department will also direct CBP to assess, upon further advice by the Department pursuant to section 706(a)(1) of the Act, countervailing duties for each entry of the subject merchandise in an amount based on the net countervailable subsidy rates for the subject merchandise as noted below.

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.
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.

This notice constitutes the countervailing duty order with respect to aluminum extrusions from the PRC, pursuant to section 706(a) of the Act. Interested parties may contact the Department's Central Records Unit, Room 7046 of the main Commerce building, for copies of an updated list of countervailing duty orders currently in effect.

Termination of Suspension of Liquidation for Finished Heat Sinks

Because the ITC made a negative determination of material injury with respect to finished heat sinks, the Department will direct CBP to terminate the suspension of liquidation for entries of finished heat sinks from the PRC entered, or withdrawn from warehouse, and to release any bond or other security, and refund any cash deposit, posted to secure the payment of estimated countervailing duties with respect to these entries.

This order is issued and published in accordance with section 706(a) of the Act, 19 CFR 351.211(b) and 19 CFR 351.224(e).

Dated: May 20, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–13103 Filed 5–25–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–840]

Certain Orange Juice From Brazil: Final Results of the Expedited Sunset Review of the Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On February 1, 2011, the Department of Commerce (the Department) initiated a sunset review of the antidumping duty order on certain orange juice (OJ) from Brazil, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). The Department has conducted an expedited (120-day) sunset review of this order pursuant to 19 CFR 351.218(e)(1)(ii)(C)(2). As a result of this sunset review, the Department finds that revocation of the antidumping duty order would be likely to lead to the continuation or recurrence of dumping.

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

FOR FURTHER INFORMATION: Hector Rodriguez or Elizabeth Eastwood, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–0629 and (202) 482–3874, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 1, 2011, the Department published the notice of initiation of the first sunset review of the antidumping duty order on OJ from Brazil, pursuant to section 751(c) of the Act. *See Initiation of Five-Year ("Sunset") Review,* 76 FR 5563 (Feb. 1, 2011) (*Notice of Initiation*).

The Department received two separate notices of intent to participate from Florida Citrus Mutual, Citrus World, Inc., and Peace River Citrus Products, Inc. (the petitioners) and from Southern Gardens Citrus Processing Corporation (Southern Gardens), a producer in the United States of a domestic like product. Both the petitioners and Southern Gardens (collectively, the domestic interested parties) claimed interested party status under sections 771(9)(C) and (D) of the Act as producers of OJ in the United States.

The Department received adequate substantive responses to the *Notice of Initiation* from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). We received no substantive responses from respondent interested parties with respect to the order covered by this sunset review. As a result, pursuant to section 752(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department conducted an expedited (120-day) sunset review of the antidumping duty order on OJ from Brazil.

Scope of the Order

The scope of the order includes certain orange juice for transport and/or further manufacturing, produced in two different forms: (1) Frozen orange juice in a highly concentrated form, sometimes referred to as frozen concentrated orange juice for manufacture (FCOJM); and (2) pasteurized single-strength orange juice which has not been concentrated, referred to as not-from-concentrate (NFC). At the time of the filing of the petition, there was an existing antidumping duty order on frozen concentrated orange juice (FCOJ) from Brazil. *See Antidumping Duty Order; Frozen Concentrated Orange Juice From Brazil,* 52 FR 16426 (May 5, 1987). Therefore, the scope of the order with regard to FCOJM covers only FCOJM produced and/or exported by those companies which were excluded or revoked from the pre-existing antidumping order on FCOJ from Brazil as of December 27, 2004. Those companies are Cargill Citrus Limitada, Coinbra-Frutesp (SA), Fischer S.A. Comercio, Industria, and Agricultura, Montecitrus Trading S.A., and Sucocitrico Cutrale, S.A.

Excluded from the scope of the order are reconstituted orange juice and frozen concentrated orange juice for retail (FCOJR). Reconstituted orange juice is produced through further manufacture of FCOJM, by adding water, oils and essences to the orange juice concentrate. FCOJR is concentrated orange juice, typically at 42 Brix, in a frozen state, packed in retail-sized containers ready for sale to consumers. FCOJR, a finished consumer product, is produced through further manufacture of FCOJM, a bulk manufacturer's product.

The subject merchandise is currently classifiable under subheadings 2009.11.00, 2009.12.25, 2009.12.45, and 2009.19.00 of the Harmonized Tariff Schedule of the United States (HTSUS). These HTSUS subheadings are provided for convenience and for customs purposes only and are not dispositive. Rather, the written description of the scope of the order is dispositive.

Analysis of Comments Received

All issues raised in this review are addressed in the "Issues and Decision Memorandum for the Expedited Sunset Review of the Antidumping Duty Order on Certain Orange Juice from Brazil" to Ronald K. Lorentzen, Deputy Assistant Secretary for Import Administration (May 19, 2011) (Decision Memo), which is hereby adopted by this notice. The issues discussed in the Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail if the order were revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, Room 7046 of the main Department building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at *http://ia.ita.doc.gov/frn.* The paper copy and electronic version of the Decision Memo are identical in content.

Final Results of Review

We determine that revocation of the antidumping duty order on OJ from Brazil would be likely to lead to the continuation or recurrence of dumping at the following weighted-average percentage margins:

Manufacturers/Exporters/ Producers	Weighted-average margin (percent)
Fischer S.A. Comercio, Industria, and Agricultura *	12.46
Montecitrus Trading S.A.	60.29
Sucocitrico Cutrale, S.A.	19.19
All-Others Rate **	16.51

* Fischer S.A. Comercio, Industria, and Agricultura is the successor-in-interest to Fischer S/A—Agroindustria.

** The all-others rate in regards to FCOJM applies to Cargill Citrus Limitada and Coinbra-Frutesp (SA). The all-others rate for NFC applies to all other companies not identified above.

This notice also serves as the only 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. Timely notification of the return or destruction of APO materials or conversion to judicial protective orders is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing the results and notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act.

Dated: May 19, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–13088 Filed 5–25–11; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–970]

Multilayered Wood Flooring From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

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

SUMMARY: The Department of Commerce ("Department") preliminarily determines that multilayered wood flooring from the People's Republic of China ("PRC") is being, or is likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 733 of the Tariff Act of 1930, as amended ("the Act"). The estimated margins of sales at LTFV are shown in the "Preliminary Determination" section of this notice.

FOR FURTHER INFORMATION CONTACT: Charles Riggle, John Hollwitz, Brandon Petelin or Erin Kearney, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–0650, (202) 482–2336, (202) 482–8173 or (202) 482–0167, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 21, 2010, the Department received a petition concerning imports of multilayered wood flooring from the PRC filed in proper form by the Coalition for American Hardwood Parity [1] ("Petitioner").[2] On October 27, 2010, the Department issued several requests for information and clarification of certain areas of the petition, to which Petitioner timely filed additional responses.

On November 4, 2010, the Department received comments from Lumber Liquidators Services, LLC ("Lumber Liquidators") and Home Legend LLC ("Home Legend"), U.S. importers of wood flooring. Lumber Liquidators and Home Legend are interested parties as defined by section 771(9)(A) of the Act. Additionally, on November 9, 2010, we

[1] The Coalition for American Hardwood Parity is comprised of Anderson Hardwood Floors, LLC, Award Hardwood Floors, Baker's Creek Wood Floors, Inc., From the Forest, Howell Hardwood Flooring, Mannington Mills, Inc., Nydree Flooring and Shaw Industries Group, Inc.

[2] *See* Petitions for the Imposition of Antidumping and Countervailing Duties: Multilayered Wood Flooring from the People's Republic of China, dated October 21, 2010 ("Petition").

received further comments filed by Lumber Liquidators, Home Legend and U.S. Floors LLC.

The Department initiated an antidumping duty investigation of multilayered wood flooring from the People's Republic of China on November 10, 2010.[3]

In the *Initiation Notice,* the Department stated that it intended to select PRC respondents based on quantity and value ("Q&V") questionnaires.[4] On November 15, 2010, the Department requested Q&V information from 190 companies identified in the petition as potential producers and/or exporters of multilayered wood flooring from the PRC.[5] The Department received timely responses to its Q&V questionnaire from 80 companies. Additionally, the Department received documentation from Petitioner claiming that UA Wood Floors, Inc. ("UA Floors"), is located in Taiwan and, accordingly, does not sell merchandise subject to this investigation. Accordingly, Petitioner agreed to the redaction of UA Floors from the Department's listing of producers and exporters of subject merchandise for the purposes of this investigation.[6] Additionally, the Department received documentation from UA Floors claiming that the company is located in Taiwan.[7]

In the *Initiation Notice,* the Department notified parties of the application process by which exporters and producers may obtain separate-rate status in non-market economy ("NME") investigations. The process requires exporters and producers to submit a separate-rate status application ("SRA") [8] and to demonstrate an absence of both *de jure* and *de facto* government control over their export activities. The SRA for this investigation was posted on the Department's Web site, *http://ia.ita.doc.gov/ia-highlights-and-news.html,* on November 12, 2010. The deadline for filing an SRA was January 18, 2011.

On December 6, 2010, the International Trade Commission ("ITC") preliminary determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of multilayered wood flooring from the PRC.[9]

Postponement of Final Determination

Section 735(a)(2)(A) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise. In the event of a negative preliminary determination, a request for such a postponement must be made by Petitioners. *See* Section 735(a)(2)(B). Section 351.210(e)(2) of the Department's regulations requires that exporters requesting postponement of the final determination must also request an extension of the provisional measures referred to in section 733(d) of the Act from a four-month period until not more than six months. We received requests to postpone the final determination from Petitioner on April 20, 2011, from Zhejiang Yuhua Timber Co., Ltd. ("Yuhua") on April 27, 2011, and from Zhejiang Layo Wood Industry Co., Ltd. ("Layo Wood") on April 29, 2011. Layo Wood and Yuhua consented to the extension of provisional measures from a four-month period to not longer than six months. Because this preliminary determination is affirmative, the requests for postponement were made by exporters who account for a significant proportion of exports of the subject merchandise, and there is no compelling reason to deny the respondents' requests, we have extended the deadline for issuance of the final determination until the 135th day after the date of publication of this preliminary determination in the **Federal Register** and have extended provisional measures to not longer than six months.

Period of Investigation

The period of investigation ("POI") is April 1, 2010, through September 30, 2010. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition, which was October 2011.[10]

Postponement of Preliminary Determination

On March 3, 2011, Petitioners made a timely request pursuant to section 733(c)(1)(A) of the Act and 19 CFR 351.205(b)(2) and (e) for a 50-day postponement of the preliminary determination. On March 11, 2011, the Department published a postponement of the preliminary AD determination on wood flooring from the PRC.[11]

Scope of the Investigation [12]

Multilayered wood flooring is composed of an assembly of two or more layers or plies of wood veneer(s) [13] in combination with a core. The several layers, along with the core, are glued or otherwise bonded together to form a final assembled product. Multilayered wood flooring is often referred to by other terms, *e.g.,* "engineered wood flooring" or "plywood flooring." Regardless of the particular terminology, all products that meet the description set forth herein are intended for inclusion within the definition of subject merchandise.

All multilayered wood flooring is included within the definition of subject merchandise, without regard to: Dimension (overall thickness, thickness of face ply, thickness of back ply, thickness of core, and thickness of inner plies; width; and length); wood species used for the face, back and inner veneers; core composition; and face grade. Multilayered wood flooring included within the definition of subject merchandise may be unfinished (*i.e.,* without a finally finished surface to protect the face veneer from wear and tear) or "prefinished" (*i.e.,* a coating applied to the face veneer, including, but not exclusively, oil or oil-modified or water-based polyurethanes, ultra-violet light cured polyurethanes, wax, epoxy-ester finishes, moisture-cured urethanes and acid-curing formaldehyde finishes.) The veneers may be also soaked in an acrylic-impregnated finish. All multilayered wood flooring is included within the definition of subject

[3] *See Multilayered Wood Flooring from the People's Republic of China: Initiation of Antidumping Duty Investigation,* 75 FR 70714 (November 18, 2010) ("*Initiation Notice*").

[4] *See Initiation Notice,* 75 FR at 70718.

[5] *See* Letter from Charles Riggle, Program Manager, AD/CVD Operations, Office 4, to All Interested Parties, "Antidumping Duty Investigation of Multilayered Wood Flooring from the People's Republic of China: Quantity and Value Questionnaire" (November 12, 2010).

[6] *See* Letter from Petitioner, dated March 31, 2011.

[7] *See* Letter from UA Floors, dated April 5, 2011.

[8] *See* Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries (April 5, 2005) ("Policy Bulletin 05.1"), available at *http://ia.ita.doc.gov/policy/bull05-1.pdf.*

[9] *See Investigation Nos.* 701–TA–476 and 731–TA–1179 (Preliminary), 75 FR 79019 (Int'l Trade Comm'n Dec. 17, 2010).

[10] *See* 19 CFR 351.204(b)(1).

[11] *See Multilayered Wood Flooring from the People's Republic of China: Postponement of Preliminary Determinations of Antidumping Duty Investigations,* 76 FR 13357 (March 11, 2011).

[12] *See* Memorandum to Christian Marsh through Susan Kuhbach and Nancy Decker from Joshua Morris: Antidumping and Countervailing Duty Investigations: Multilayered Wood Flooring from the People's Republic of China; Scope, dated May 19, 2011.

[13] A "veneer" is a thin slice of wood, rotary cut, sliced or sawed from a log, bolt or flitch. Veneer is referred to as a ply when assembled.

merchandise regardless of whether the face (or back) of the product is smooth, wire brushed, distressed by any method or multiple methods, or hand-scraped. In addition, all multilayered wood flooring is included within the definition of subject merchandise regardless of whether or not it is manufactured with any interlocking or connecting mechanism (for example, tongue-and-groove construction or locking joints). All multilayered wood flooring is included within the definition of the subject merchandise regardless of whether the product meets a particular industry or similar standard.

The core of multilayered wood flooring may be composed of a range of materials, including but not limited to hardwood or softwood veneer, particleboard, medium-density fiberboard (MDF), high-density fiberboard (HDF), stone and/or plastic composite, or strips of lumber placed edge-to-edge.

Multilayered wood flooring products generally, but not exclusively, may be in the form of a strip, plank, or other geometrical patterns (*e.g.,* circular, hexagonal). All multilayered wood flooring products are included within this definition regardless of the actual or nominal dimensions or form of the product.

Specifically excluded from the scope are cork flooring and bamboo flooring, regardless of whether any of the sub-surface layers of either flooring are made from wood. Also excluded is laminate flooring. Laminate flooring consists of a top wear layer sheet not made of wood, a decorative paper layer, a core-layer of high-density fiberboard, and a stabilizing bottom layer.

Imports of the subject merchandise are provided for under the following subheadings of the Harmonized Tariff Schedule of the United States (HTSUS): 4412.31.0520; 4412.31.0540; 4412.31.0560; 4412.31.2510; 4412.31.2520; 4412.31.4040; 4412.31.4050; 4412.31.4060; 4412.31.4070; 4412.31.5125; 4412.31.5135; 4412.31.5155; 4412.31.5165; 4412.31.3175; 4412.31.6000; 4412.31.9100; 4412.32.0520; 4412.32.0540; 4412.32.0560; 4412.32.2510; 4412.32.2520; 4412.32.3125; 4412.32.3135; 4412.32.3155; 4412.32.3165; 4412.32.3175; 4412.32.3185; 4412.32.5600; 4412.39.1000; 4412.39.3000; 4412.39.4011; 4412.39.4012; 4412.39.4019; 4412.39.4031; 4412.39.4032; 4412.39.4039; 4412.39.4051; 4412.39.4052; 4412.39.4059; 4412.39.4061; 4412.39.4062; 4412.39.4069; 4412.39.5010; 4412.39.5030; 4412.39.5050; 4412.94.1030; 4412.94.1050; 4412.94.3105; 4412.94.3111; 4412.94.3121; 4412.94.3131; 4412.94.3141; 4412.94.3160; 4412.94.3171; 4412.94.4100; 4412.94.5100; 4412.94.6000; 4412.94.7000; 4412.94.8000; 4412.94.9000; 4412.94.9500; 4412.99.0600; 4412.99.1020; 4412.99.1030; 4412.99.1040; 4412.99.3110; 4412.99.3120; 4412.99.3130; 4412.99.3140; 4412.99.3150; 4412.99.3160; 4412.99.3170; 4412.99.4100; 4412.99.5100; 4412.99.5710; 4412.99.6000; 4412.99.7000; 4412.99.8000; 4412.99.9000; 4412.99.9500; 4418.71.2000; 4418.71.9000; 4418.72.2000; and 4418.72.9500.

In addition, imports of subject merchandise may enter the United States under the following HTSUS subheadings: 4409.10.0500; 4409.10.2000; 4409.29.0515; 4409.29.0525; 4409.29.0535; 4409.29.0545; 4409.29.0555; 4409.29.0565; 4409.29.2530; 4409.29.2550; 4409.29.2560; 4418.71.1000; 4418.79.0000; and 4418.90.4605.

While HTSUS subheadings are provided for convenience and customs purposes, the written description of the subject merchandise is dispositive.

Non-Market Economy Country

For purposes of initiation, Petitioner submitted an LTFV analysis for the PRC as an NME.[14] The Department's most recent examination of the PRC's market status determined that NME status should continue for the PRC.[15] In accordance with section 771(18)(C)(i) of the Act, the NME status remains in effect until revoked by the Department. The Department has not revoked the PRC's status as an NME country, and we have therefore treated the PRC as an NME in this preliminary determination and applied our NME methodology.

Selection of Respondents

In accordance with section 777A(c)(2) of the Act, the Department selected the three largest exporters (by volume) of wood flooring as the mandatory respondents in this investigation based on the information contained in the timely submitted Quantity &Value ("Q&V") questionnaire responses filed by 81 exporters/producers: Layo Wood; Yuhua; and Riverside Plywood Corporation, Samling Elegant Living Trading (Labuan) Limited, Samling Global USA, Inc., Samling Riverside Co., Ltd. and Suzhou Times Flooring (collectively, the "Samling Group").[16] On January 10, 2010, the Department issued antidumping questionnaires to these three companies. In January and February 2011, Layo Wood, Yuhua and the Samling Group submitted timely responses to sections A, C, and D of the Department's antidumping questionnaire.

Fine Furniture (Shanghai) Limited ("Fine Furniture") requested to be treated as a voluntary respondent in this investigation on November 12, 2010. Shanghai Lizhong Wood Products Co., Ltd. ("Lizhong") and Dun Hua City Jisen Wood Co., Ltd., asked to be treated as voluntary respondents on November 15, 2010. Armstrong Wood Products asked to be treated as a voluntary respondent on December 3, 2010. On January 31, 2011, Fine Furniture and Lizhong each submitted unsolicited responses to section A of the Department's original questionnaire. On February 23, 2011, Fine Furniture and Lizhong each submitted unsolicited responses to sections C and D of the Department's original questionnaire.

The Department issued supplemental questionnaires to Layo Wood, Yuhua and the Samling Group from January to April 2011. Layo Wood, Yuhua and the Samling Group submitted timely responses to the Department's supplemental questionnaires from January to May 2011. From January to May 2011, Petitioner submitted comments to the Department regarding the submissions and/or responses of Layo Wood, Yuhua and the Samling Group.

Surrogate Country

When the Department is investigating imports from an NME, section 773(c)(1) of the Act directs it to base normal value, in most circumstances, on the NME producer's factors of production ("FOPs") valued in a surrogate market-economy country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the FOPs, the Department shall utilize, to

[14] *See Initiation Notice,* 75 FR at 70716.

[15] *See* Memorandum for David M. Spooner, Assistant Secretary for Import Administration, Antidumping Duty Investigation of Certain Lined Paper Products from the People's Republic of China ("China") China's Status as a Non-Market Economy ("NME") (August 30, 2006) (memorandum is on file in the CRU on the record of case number A–570–901).

[16] *See* the Department's memorandum entitled, "Antidumping Duty Investigation of Multilayered Wood Flooring from the People's Republic of China: Revised Respondent Selection Memorandum," dated February 8, 2011 ("Respondent Selection Memo").

the extent possible, the prices or costs of FOPs in one or more market-economy countries that are at a level of economic development comparable to that of the NME country and are significant producers of comparable merchandise. The sources of the surrogate values we have used in this investigation are discussed under the "Normal Value" section below.

The Department determined that India, the Philippines, Indonesia, Thailand, Ukraine and Peru are countries comparable to the PRC in terms of economic development.[17] Once the countries that are economically comparable to the PRC have been identified, we select an appropriate surrogate country by determining whether an economically comparable country is a significant producer of comparable merchandise and whether the data for valuing FOPs is both available and reliable.[18] Fine Furniture, Layo Wood, Petitioner, the Samling Group and Yuhua submitted comments regarding surrogate country selection on March 15, 2011. Layo Wood, Petitioner, the Samling Group and Yuhua submitted further comments regarding surrogate country selection on March 21, 2011. On April 6, 2011, Petitioner submitted further comments regarding surrogate country and surrogate value selection. On April 8, 2011, Layo Wood included comments regarding surrogate country selection in response to section D of the Department's second supplemental questionnaire. On May 2, 2011, Layo Wood submitted further comments regarding surrogate country and surrogate value selection.

We have determined that it is appropriate to use the Philippines as a surrogate country pursuant to section 773(c)(4) of the Act based on the following: (1) It is at a similar level of economic development; (2) it is a significant producer of comparable merchandise; and (3) we have reliable data from the Philippines that we can use to value the FOPs.[19] Thus, we have calculated normal value ("NV") using Philippine prices when available and appropriate to value the FOPs of the multilayered wood flooring producers under investigation. We have obtained and relied upon contemporaneous publicly available information wherever possible.[20]

In accordance with 19 CFR 351.301(c)(3)(i), for the final determination in an antidumping investigation, interested parties may submit publicly available information to value the FOPs within 40 days after the date of publication of the preliminary determination.[21]

Surrogate Value Comments

Surrogate factor valuation comments and surrogate value information with which to value the FOPs for the preliminary determination in this proceeding were originally due March 11, 2011. On March 1, 2011, Layo Wood, Yuhua and the Samling Group requested an extension of time to submit potential surrogate value. On March 3, 2011, the Department extended the deadline for submission of surrogate value information for all interested parties until March 15, 2011. Surrogate value submissions were filed March 15, 2011, by Petitioner, Layo Wood, Yuhua, the Samling Group and Fine Furniture. Petitioner, Layo Wood, Yuhua and the Samling Group filed rebuttal surrogate value comments on March 21, 2011.[22]

Targeted Dumping

On April 4, 2011, the Department received Petitioner's allegations of targeted dumping by Layo Wood, Yuhua and the Samling Group using the Department's methodology as established in *Steel Nails*.[23] Based on our examination of the targeted dumping allegations filed by Petitioner, and pursuant to section 777A(d)(1)(B)(i) of the Act, the Department has determined that Petitioner's allegations sufficiently indicate that there is a pattern of export prices (or constructed export prices) for comparable merchandise that differ significantly among purchasers and regions.

As a result, the Department has applied the targeted dumping analysis established in *Steel Nails* to Layo Wood, Yuhua and the Samling Group's U.S. sales to targeted purchasers and regions. The methodology we employed involves a two-stage test; the first stage addresses the pattern requirement and the second stage addresses the significant-difference requirement.[24] In this test we made all price comparisons on the basis of comparable merchandise (*i.e.,* by control number or CONNUM). The test procedures are the same for the customer and region targeted-dumping allegations. We based all of our targeted-dumping calculations on the net U.S. price that we determined for U.S. sales by Layo Wood, Yuhua and the Samling Group in our standard margin calculations.[25]

As a result of our analysis, we preliminarily determine that there is a pattern of prices for U.S. sales of comparable merchandise that differ significantly among certain purchasers and regions for Layo Wood and the Samling Group in accordance with section 777A(d)(1)(B)(i) of the Act, and our practice as discussed in *Steel Nails.* Our analysis, however, indicates that there is no pattern of prices for U.S. sales of comparable merchandise that differ significantly among certain purchasers and regions for Yuhua. We also find that the result using the standard average-to-average methodology is not substantially different from that using the alternative average-to-transaction methodology for Layo Wood because both methods result in a *de minimis* margin. Accordingly, for this preliminary determination we have applied the standard average-to-average methodology to all U.S. sales that Yuhua and Layo Wood reported, and have applied the alternative average-to-transaction methodology to all U.S. sales that Samling Group reported.

[17] *See* Memorandum to Wendy Frankel from Carole Showers, "Request for a List of Surrogate Countries for an Antidumping Duty Investigation of Multilayered Wood Flooring from the People's Republic of China ("PRC") ("Office of Policy Surrogate Countries Memorandum"), dated February 17, 2011. The Department notes that these six countries are part of a non-exhaustive list of countries that are at a level of economic development comparable to the PRC.

[18] *See id.*

[19] *See* Memorandum to Abdelali Elouaradia from Drew Jackson, "Multilayered Wood Flooring from the People's Republic of China: Surrogate Country Memorandum" (May 19, 2011).

[20] *See id.*

[21] In accordance with 19 CFR 351.301(c)(1), for the final determination of this investigation, interested parties may submit factual information to rebut, clarify, or correct factual information submitted by any other interested party less than ten days before, on, or after, the applicable deadline for submission of such factual information. However, the Department notes that 19 CFR 351.301(c)(1) permits new information only insofar as it rebuts, clarifies, or corrects information recently placed on the record. The Department generally will not accept the submission of additional, previously absent-from-the-record alternative surrogate value information. *See Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in part,* 72 FR 58809 (October 17, 2007), and accompanying Issues and Decision Memorandum at Comment 2.

[22] *See* the "Factor Valuation" section below; *see also* Memorandum to Abdelali Elouaradia through Charles Riggle re: Selection of Surrogate Values, dated May 19, 2011 ("Surrogate Value Memorandum").

[23] *See Certain Steel Nails from the United Arab Emirates: Notice of Final Determination of Sales at Not Less Than Fair Value,* 73 FR 33985 (June 16, 2008) ("*Steel Nails*") and accompanying Issues and Decision Memorandum at Comments 1–9.

[24] *See* section 777A(d)(1)(B)(i) of the Act and *Steel Nails,* and accompanying Issues and Decision Memorandum at Comment 2.

[25] For further discussion of the test and the results, *see* Samling Analysis Memorandum, Layo Analysis Memorandum and Yuhua Analysis Memorandum.

Affiliation

Based on the evidence presented in Layo Wood's questionnaire responses, we preliminarily find that Layo Wood and Jiaxing Brilliant Import and Export Company ("Jiaxing Brilliant") are not affiliated pursuant to section 771(33) of the Act.[26]

Based on the evidence included in the Samling Group's questionnaire responses, we preliminarily find affiliation between Baroque Timber Industries (Zhongshan) Co., Ltd. ("BTI"), Riverside Plywood Corporation ("RPC"), Samling Elegant Living Trading (Labuan) Limited ("SELT"), Samling Global USA, Inc. ("SGUSA"), Samling Riverside Co., Ltd. ("SRC"), and Suzhou Times Flooring ("STF"), pursuant to section 771(33)(A) and (F) of the Act. In addition, based on the evidence presented in the Samling Group's questionnaire responses, we find that BTI, RPC, and STF should be collapsed and treated as a single entity for purposes of this investigation, pursuant to sections 771(33)(A) and (F) of the Act, and 19 CFR 351.401(f)(1) and (2).[27]

Based on the evidence included in Yuhua's questionnaire responses, we preliminarily determine that there is no basis for finding affiliation between Yuhua and A-Timber Co., Ltd., A-Timber Flooring Co., Ltd., or Oriental Asia International Ltd., pursuant to sections 771(33)(A) and (F) of the Act.[28]

Separate Rates

In the *Initiation Notice,* the Department notified parties of the application process by which exporters and producers may obtain separate-rate status in NME investigations.[29] The process requires exporters and producers to submit an SRA.[30] The standard for eligibility for a separate rate is whether a firm can demonstrate an absence of both *de jure* and *de facto* government control over its export activities. In the instant investigation, the Department received timely-filed SRAs from 73 companies.[31]

Of the SR applicants, Jiangsu Senmao Bamboo and Wood Industry Co., Ltd. and Guangdong Yihua Timber Industry Co., Ltd. submitted SRAs on January 31, 2011, and January 21, 2011, respectively, pursuant to extensions granted by the Department. In addition to the aforementioned 73 companies, in response to the Department's requests for information, Jiaxing Brilliant provided information in Layo Wood's responses to the Department's supplemental questionnaires on January 31, 2011, February 23, 2011, April 5, 2011 and April 8, 2011. Based on the information provided in those responses, the Department preliminarily finds that Jiaxing Brilliant is eligible for a separate rate.

In proceedings involving NME countries, the Department has a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty rate. It is the Department's policy to assign all exporters of merchandise subject to investigation in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. Exporters can demonstrate this independence through the absence of both *de jure* and *de facto* governmental control over export activities. The Department analyzes each entity exporting the subject merchandise under a test arising from *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991) ("Sparklers"), as further developed in *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*"). In accordance with the separate-rates criteria, the Department assigns separate rates in NME cases only if respondents can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

[26] *See* Memorandum to Abdelali Elouaradia through Charles Riggle re: Preliminary Determination Regarding Affiliation and Collapsing of Zhejiang Layo Wood Industry Co., Ltd. and Jiaxing Brilliant Import & Export Co., Ltd., dated May 19, 2011.

[27] *See* Memorandum to Abdelali Elouaradia through Charles Riggle re: Preliminary Determination Regarding Affiliation and Collapsing of Baroque Timber Industries (Zhongshan) Co., Ltd., Riverside Plywood Corporation, Samling Elegant Living Trading (Labuan) Limited, Samling Riverside Co., Ltd., and Suzhou Times Flooring Co., Ltd., dated May 19, 2011.

[28] *See* Memorandum to Abdelali Elouaradia through Charles Riggle re: Preliminary Determination Regarding Affiliation Zhejiang Yuhua Timber Co., Ltd.

[29] *See Initiation Notice,* 75 FR 70718.

[30] *See* Policy Bulletin 05.1: "While continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME investigations will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applied both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of 'combination rates' because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question and produced by a firm that supplied the exporter during the period of investigation." *See* Policy Bulletin 05.1 at 6.

[31] The 73 separate-rate applicants are: (1) MuDanJiang Bosen Wood Industry Co., Ltd., (2) Huzhou Chenghang Wood Co., Ltd., (3) Hangzhou Hanje Tec Co., Ltd., (4) Nakahiro Jyou Sei Furniture (Dalian) Co., Ltd., (5) Shenyang Haobainian Wooden Co., Ltd., (6) Dalian Dajen Wood Co., Ltd., (7) HaiLin LinJing Wooden Products, Ltd., (8) Dun Hua Sen Tai Wood Co., Ltd., (9) Dunhua Jisheng Wood Industry Co., Ltd., (10) Hunchun Forest Wolf Industry Co., Ltd., (11) Guangzhou Panyu Southern Star Co., Ltd., (12) Nanjing Minglin Wooden Industry Co., Ltd., (13) Zhejiang Fudeli Timber Industry Co., Ltd., (14) Suzhou Dongda Wood Co., Ltd., (15) Guangzhou Pan Yu Kang Da Board Co., Ltd., (16) Kornbest Enterprises Ltd., (17) Metropolitan Hardwood Floors, Inc., (18) Zhejiang Longsen Lumbering Co., Ltd., (19) Xinyuan Wooden Industry Co., Ltd., (20) Dasso Industrial Group Co., Ltd., (21) Hong Kong Easoon Wood Technology Co., Ltd., (22) Armstrong Wood Products Kunshan Co., Ltd., (23) Baishan Huafeng Wooden Product Co., Ltd., (24) Changbai Mountain Development and Protection Zone Hongtu Wood Industry Co., Ltd., (25) Changzhou Hawd Flooring Co., Ltd., (26) Dalian Jiuyuan Wood Industry Co., Ltd., (27) Dalian Penghong Floor Products Co., Ltd., (28) Dongtai Fuan Universal Dynamics LLC, (29) Dunhua City Dexin Wood Industry Co., Ltd., (30) Dunhua City Hongyuan Wood Industry Co., Ltd., (31) Dunhua City Jisen Wood Industry Co., Ltd., (32) Dunhua City Wanrong Wood Industry Co., Ltd., (33) Fusong Jinlong Wooden Group Co., Ltd., (34) Fusong Qianqiu Wooden Product Co., Ltd., (35) GTP International, (36) Guangdong Yihua Timber Industry Co., Ltd., (37) HaiLin LinJing Wooden Products, Ltd., (38) Huzhou Fulinmen Imp & Exp. Co., Ltd., (39) Huzhou Fuma Wood Bus. Co., Ltd., (40) Jiafeng Wood (Suzhou) Co., Ltd., (41) Jiashan Hui Jia Le Decoration Material Co., Ltd., (42) Jilin Forest Industry Jinqiao Flooring Group Co., Ltd., (43) Karly Wood Product Limited, (44) Kunshan Yingyi-Nature Wood Industry Co., Ltd., (45) Puli Trading Limited, (46) Shanghai Eswell Timber Co. Ltd., (47) Shanghai Lairunde Wood Co., Ltd., (48) Shanghai New Sihe Wood Co., Ltd., (49) Shanghai Shenlin Corporation, (50) Shenzhenshi Huanwei Woods Co., Ltd., (51) Vicwood Industry (Suzhou) Co., Ltd., (52) Xiamen Yung De Ornament Co., Ltd., (53) Xuzhou Shenghe Wood Co., Ltd., (54) Yixing Lion-King Timber Industry Co., Ltd., (55) Jiangsu Simba Flooring Industry Co., Ltd, (56) Zhejiang Biyork Wood Co., Ltd., (57) Zhejiang Dadongwu GreenHome Wood Co., Ltd., (58) Zhejiang Desheng Wood Industry Co., Ltd., (59) Zhejiang Shiyou Timber Co., Ltd., (60) Zhejiang Tianzhen Bamboo & Wood Development Co., Ltd., (61) Chinafloors Timber (China) Co. Ltd., (62) Shanghai Lizhong Wood Products Co., Ltd., (63) Fine Furniture (Shanghai) Limited, (64) Huzhou Sunergy World Trade Co. Ltd., (65) Huzhou Jesonwood Co., Ltd., (66) A&W (Shanghai) Woods Co., Ltd., (67) Fu Lik Timber (HK) Company Limited, (68) Yekalon Industry, Inc./Sennorwell International Group (Hong Kong) Limited, (69) Kemian Wood Industry (Kunshan) Co., Ltd., (70) Dalian Kemian Wood Industry Co., Ltd., (71) Dalian Huilong Wooden Products Co., Ltd., (72) Jiangsu Senmao Bamboo and Wood Industry Co., Ltd., and (73) Real Wood Floors, LLC.

A. Separate-Rate Recipients [32]

1. Wholly Foreign-Owned or Located in a Market Economy

Twelve separate rate applicants provided evidence in their SRAs that they are wholly owned by individuals or companies located in a market economy ("ME") (collectively "Foreign-Owned SR Applicants").[33] Therefore, because they are wholly foreign-owned or located in a market economy, and we have no evidence indicating that they are under the control of the PRC, a separate-rate analysis is not necessary to determine whether these companies are independent from government control.[34] Accordingly, we have preliminarily granted a separate rate to these companies.

2. Joint Ventures Between Chinese and Foreign Companies or Wholly Chinese-Owned Companies

Sixty-two of the separate-rate companies in this investigation stated that they are either joint ventures between Chinese and foreign companies or are wholly Chinese-owned companies (collectively "PRC SR Applicants"). Therefore, the Department must analyze whether these respondents can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

a. Absence of *De Jure* Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) other formal measures by the government decentralizing control of companies.[35]

The evidence provided by the PRC SR Recipients supports a preliminary finding of *de jure* absence of governmental control based on the following: (1) An absence of restrictive stipulations associated with the individual exporters' business and export licenses; (2) there are applicable legislative enactments decentralizing control of the companies; and (3) and there are formal measures by the government decentralizing control of Chinese companies.

b. Absence of *De Facto* Control

Typically, the Department considers four factors in evaluating whether each respondent is subject to *de facto* government control of its export functions: (1) Whether the export prices are set by or are subject to the approval of a government agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.[36] The Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of government control which would preclude the Department from assigning separate rates.

In this investigation, the separate rate applicants each asserted the following: (1) That the export prices are not set by, and are not subject to, the approval of a governmental agency; (2) they have authority to negotiate and sign contracts and other agreements; (3) they have autonomy from the government in making decisions regarding the selection of management; and (4) they retain the proceeds of their export sales and make independent decisions regarding disposition of profits or financing of losses. Additionally, each of these companies' SRA responses indicates that its pricing during the POI does not involve coordination among exporters.

Evidence placed on the record of this investigation by 73 of the SR Applicants demonstrates an absence of *de jure* and *de facto* government control with respect to their exports of the merchandise under investigation, in accordance with the criteria identified in *Sparklers* and *Silicon Carbide.* Therefore, we are preliminarily granting a separate rate to these entities and have identified each of them in the *Preliminary Determination* section of this notice, below.

Companies Not Receiving a Separate Rate

Real Wood Floors, LLC ("RWF"), submitted a timely response to the Department's separate rate application on January 19, 2011. In its response, RWF claims that it is the first seller of the subject merchandise in the United States. Sales-related documentation submitted by RWF in its SRA indicates that RWF is an importer of subject merchandise.[37] As RWF is neither an exporter, nor a Chinese producer, of subject merchandise that entered the United States during the POI, the Department finds that RWF is not eligible to apply for a separate rate.

Application of Facts Available and Adverse Facts Available

The PRC-Wide Entity and PRC-Wide Rate

We issued our request for Q&V information to 190 potential Chinese exporters of the subject merchandise, in addition to posting the Q&V questionnaire on the Department's Web site.[38] While information on the record of this investigation indicates that there are numerous producers/exporters of multilayered wood flooring in the PRC, we received 80 timely filed Q&V responses. Although all exporters were given an opportunity to provide Q&V information, not all exporters provided a response to the Department's Q&V letter. Therefore, the Department has preliminarily determined that there were exporters/producers of the subject merchandise during the POI from the PRC that did not respond to the Department's request for information. We have treated these non-responsive PRC producers/exporters as part of the PRC-wide entity because they did not demonstrate their eligibility for a separate rate.[39]

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, subject to subsections 782(c)(1) and (e) of the Act, (C) significantly impedes a proceeding under the antidumping statute, or (D) provides such information but the

[32] All separate-rate applicants receiving a separate rate are hereby referred to collectively as the "SR Recipients," including the mandatory respondents.

[33] The wholly foreign-owned SR Applicants are: (1) Jianfeng Wood (Suzhou) Co, Ltd; (2) Fu Lik Timber (HK) Company Limited; (3) Xiamen Yung De Ornament Co., Ltd; (4) Metropolitan Hardwood Floors, Inc.; (5) A&W (Shanghai) Woods Co., Ltd.; (6) Vicwood Industry (Suzhou) Co., Ltd.; (7) Armstrong Wood Products Kunshan Co., Ltd.; (8) Kunshan Yingyi-Nature Wood Industry Co., Ltd.; (9) Dongtai Fuan Universal Dynamics LLC; (10) Yixing Lion-King Timber Industry Co., Ltd.; (11) Chinafloors Timber (China) Co., Ltd.; and (12) Fine Furniture (Shanghai) Limited.

[34] *See, e.g., Certain New Pneumatic Off-The-Road Tires From the People's Republic of China; Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 73 FR 9278, 9284 (February 20, 2008) (unchanged for the final determination).

[35] *See Sparklers,* 56 FR at 20589.

[36] *See Silicon Carbide,* 59 FR at 22586–87; *see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China,* 60 FR 22544, 22545 (May 8, 1995).

[37] *See* Separate Rate Application of Real Wood Floors, LLC: Multilayered Wood Flooring from the People's Republic of China, dated January 19, 2011.

[38] *See* Respondent Selection Memo.

[39] *See, e.g., Kitchen Racks Prelim,* unchanged in *Kitchen Racks Final.*

information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Information on the record of this investigation indicates that the PRC-wide entity was non-responsive. Specifically, certain companies did not respond to our questionnaire requesting Q&V information. Accordingly, we find that the PRC-entity withheld information requested by the Department; failed to provide information in a timely manner and neither indicated that it was having difficulty providing the information nor requested that it be allowed to submit the information in an alternate form; and significantly impeded the proceeding by not submitting the requested information. As a result, pursuant to sections 776(a)(2)(A)–(C) of the Act, we find that the use of facts available is appropriate to determine the PRC-wide rate. *See Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam,* 68 FR 4986 (January 31, 2003), unchanged in *Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam,* 68 FR 37116 (June 23, 2003).

Section 776(b) of the Act provides that, in selecting from among the facts otherwise available, the Department may employ an adverse inference if an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information.[40] We find that, because the PRC-wide entity did not respond to our requests for information, it has failed to cooperate to the best of its ability. Furthermore, the PRC-wide entity's refusal to provide the requested information constitutes circumstances under which it is reasonable to conclude that less than full cooperation has been shown.[41] Therefore, the Department preliminarily finds that, in selecting from among the facts available, an adverse inference is appropriate.

When employing an adverse inference, section 776 of the Act indicates that the Department may rely upon information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record. In selecting a rate for AFA, the Department selects a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated. 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.[42] The petition identified rates of 194.49 and 280.60 percent.[43] These rates are higher than any of the calculated rates assigned to individually examined companies. Thus, as AFA, the Department's practice would be to assign the rate of 280.60 percent to the PRC-wide entity.

Corroboration of Information

Section 776(c) of the Act, however, requires the Department to corroborate, to the extent practicable, secondary information used as facts available. Secondary information is defined as "information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise." *See* 19 CFR 351.308(c) and (d).

The SAA clarifies that "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value. *See* the SAA at 870. The SAA also states that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation. *Id.* To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used.

In order to determine the probative value of the margins in the petition for use as AFA for purposes of this preliminary determination, we analyzed the U.S. prices and normal values for each of the individually investigated parties. Based on this analysis, we determined that while there were U.S. prices within the range of the prices contained in the petition, the normal value information contained in the petition does not have probative value for purposes of this preliminary determination. Thus, with respect to AFA, for the preliminary determination, we have assigned the PRC-wide entity the rate of 82.65 percent, the highest calculated transaction-specific rate among mandatory respondents. No corroboration of this rate is necessary because we are relying on information obtained in the course of this investigation, rather than secondary information.[44]

Margin for the Separate Rate Companies

As discussed above, the Department has preliminarily determined that in addition to the individually investigated entities, 73 other companies have demonstrated their eligibility for a separate rate. Normally, the Department's practice is to establish a margin, as the separate rate, for these entities based on the average of the rates we calculated for the mandatory respondents, excluding any rates that were zero, *de minimis,* or based entirely on AFA.[45] In the instant investigation, only one of the margins assigned is neither zero or *de minimis* nor based on AFA. Thus, we are assigning that rate, 10.88%, to the separate rate applicants.[46] The separate-rate applicants are listed in the "Suspension of Liquidation" section of this notice.

[40] *See Statement of Administrative Action,* accompanying the Uruguay Round Agreements Act ("URAA"), H.R. Rep. No. 103–316, 870 (1994) ("SAA"); *see also Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from the Russian Federation,* 65 FR 5510, 5518 (February 4, 2000).

[41] *See Nippon Steel Corporation* v. *United States,* 337 F.3d 1373, 1383 (Fed. Cir. 2003) ("*Nippon Steel*") (noting that the Department need not show intentional conduct existed on the part of the respondent, but merely that a "failure to cooperate to the best of a respondent's ability" existed (*i.e.,* information was not provided "under circumstances in which it is reasonable to conclude that less than full cooperation has been shown")).

[42] *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 31, 2000), and accompanying Issues and Decision Memorandum, at "Facts Available."

[43] *See Multilayered Wood Flooring from the People's Republic of China: Initiation of Antidumping Investigation,* 75 FR 70714 (November 18, 2010).

[44] *See* 19 CFR 351.308(c) and (d) and section 776(c) of the Act; *see also Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances, in Part: Light-Walled Rectangular Pipe and Tube from the People's Republic of China,* 73 FR 35652, 35653 (June 24, 2008), and accompanying Issues and Decision Memorandum at 1.

[45] *See, e.g., Preliminary Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China,* 71 FR 77373, 77377 (December 26, 2006), unchanged in *Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China,* 72 FR 19690 (April 19, 2007).

[46] *See* Section 735(c)(5)(B) of the Act; *see also Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 74 FR 36656 (July 24, 2009).

Date of Sale

19 CFR 351.401(i) states that, "in identifying the date of sale of the merchandise under consideration or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the normal course of business." In *Allied Tube & Conduit Corp.* v. *United States,* the CIT noted that a "party seeking to establish a date of sale other than invoice date bears the burden of producing sufficient evidence to 'satisf{y}' the Department that 'a different date better reflects the date on which the exporter or producer establishes the material terms of sale.'" [47] The date of sale is generally the date on which the parties agree upon all substantive terms of the sale. This normally includes the price, quantity, delivery terms and payment terms.[48]

For sales by the Samling Group, we used the commercial invoice date as the sale date because record evidence indicates that the terms of sale were not set until the issuance of the commercial invoice.

Consistent with 19 CFR 351.401(i), for sales made by Layo Wood and Yuhua, the Department finds that the date of invoice does not always reflect the date on which the terms of sale were finalized. For those sales made by Layo Wood and Yuhua that shipped prior to the invoice date, the Department has used the shipment date as the date of sale. For all other relevant sales made by Layo Wood and Yuhua over the course of POI, the Department has used invoice date as the date of sale.[49]

Fair Value Comparisons

To determine whether sales of multilayered wood flooring to the United States by the respondents were made at LTFV, we compared export price ("EP") and constructed export price ("CEP") to normal value ("NV"), as described in the "Constructed Export Price," "Export Price," and "Normal Value" sections of this notice.

U.S. Price

Constructed Export Price

In accordance with section 772(b) of the Act, CEP is "the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under subsections (c) and (d)." In its questionnaire responses, the Samling Group stated that it made certain CEP sales through U.S. affiliates. In accordance with section 772(b) of the Act, we used CEP for the Samling Group's U.S. sales where the merchandise subject to this investigation was sold directly to an affiliated purchaser located in the United States.

For sales reported by the Samling Group as CEP sales, we calculated CEP based on delivered prices to unaffiliated purchasers in the United States. We made deductions from the U.S. sales price, where applicable, for movement expenses in accordance with section 772(c)(2)(A) of the Act. These included such expenses as foreign inland freight from the plant to the port of exportation and marine insurance. In accordance with section 772(d)(1) of the Act, the Department deducted commissions, billing adjustments, early payment discounts, domestic inland freight, domestic brokerage and handling, U.S. inland freight, other U.S. transportation costs, U.S. duties, direct and indirect selling expenses, international freight and marine insurance, credit expenses, inventory carrying costs and indirect selling expenses from the U.S. price, all of which relate to commercial activity in the United States. Finally, we deducted CEP profit, in accordance with sections 772(d)(3) and 772(f) of the Act.[50]

Export Price

In accordance with section 772(a) of the Act, we used EP for certain U.S. sales reported by the Samling Group and all sales reported by Layo Wood and Yuhua. We calculated EP based on the packed prices to unaffiliated purchasers in, or for exportation to, the United States. We made deductions, as appropriate, for any movement expenses (*e.g.,* foreign inland freight from the plant to the port of exportation, domestic brokerage, international freight to the port of importation) in accordance with section 772(c)(2)(A) of the Act. Where foreign inland freight or foreign brokerage and handling fees were provided by PRC service providers or paid for in renminbi, we based those charges on surrogate value rates.[51]

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine the NV using an FOP methodology if the merchandise is exported from an NME and the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. The Department bases NV on the FOPs because the presence of government controls on various aspects of NMEs renders price comparisons and the calculation of production costs invalid under the Department's normal methodologies. Therefore, for this preliminary determination we have calculated NV based on FOPs in accordance with sections 773(c)(3) and (4) of the Act and 19 CFR 351.408(c). The FOPs include: (1) Hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs.[52] In accordance with 19 CFR 351.408(c)(1), the Department will normally use publicly available information to find an appropriate surrogate value to value FOPs, but when a producer sources an input from a ME and pays for it in a ME currency, the Department may value the factor using the actual price paid for the input.[53]

Factor Valuation Methodology

In accordance with section 773(c) of the Act, we calculated NV based on FOP data reported by respondents during the POI. To calculate NV, we multiplied the reported per-unit factor-consumption rates by publicly available surrogate values (except as discussed below). In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data.[54] As appropriate, we adjusted input prices by including freight costs to make them delivered prices. Specifically, we added to Philippine import surrogate values an

[47] *Allied Tube & Conduit Corp.* v. *United States* 132 F. Supp. 2d 1087, 1090 (CIT 2001).

[48] *See Carbon and Alloy Steel Wire Rod from Trinidad and Tobago: Final Results of Antidumping Duty Administrative Review,* 72 FR 62824 (November 7, 2007), and accompanying Issue and Decision Memorandum at Comment 1; *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products from Turkey,* 65 FR 15123 (March 21, 2000), and accompanying Issues and Decision Memorandum at Comment 2.

[49] *See* Layo, Samling and Yuhua Analysis Memorandums.

[50] *See* Surrogate Value Memorandum.

[51] *See* "Factor Valuation" section below for further discussion of surrogate value rates.

[52] *See* Section 773(c)(3)(A)–(D) of the Act.

[53] *See* 19 CFR 351.408(c)(1); *see also Shakeproof Assembly Components Div of Ill* v. *United States,* 268 F.3d 1376, 1382–83 (Fed. Cir. 2001) (affirming the Department's use of market-based prices to value certain FOPs).

[54] *See, e.g., New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less than Fair Value and Partial Affirmative Determination of Critical Circumstances,* 73 FR 40485 (July 15, 2008), and accompanying Issues and Decision Memorandum at Comment 9.

Indian surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory where appropriate. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corp.* v. *United States,* 117 F.3d 1401, 1407–08 (Fed. Cir. 1997) (remanding to Commerce its freight expense calculation to avoid double-counting). A detailed description of all surrogate values used for Layo Wood, Yuhua and the Samling Group can be found in the Surrogate Value Memorandum.

For the preliminary determination, in accordance with the Department's practice, we used data from the Philippine Import Statistics and other publicly available sources from the Philippines in order to calculate surrogate values for Layo Wood, Yuhua and the Samling Group's FOPs (direct materials, energy, and packing materials) and certain movement expenses. In selecting the best available information for valuing FOPs in accordance with section 773(c)(1) of the Act, the Department's practice is to select, to the extent practicable, surrogate values which are non-export average values, most contemporaneous with the POI, product-specific, and tax-exclusive.[55] The record shows that data in the Philippines' Import Statistics, as well as those from the other sources from the Philippines, are contemporaneous with the POI, product-specific, and tax-exclusive.[56] In those instances where we could not obtain publicly available information contemporaneous to the POI with which to value factors, we adjusted the surrogate values using, where appropriate, the Philippines' WPI as published in the IMF's *International Financial Statistics*.[57]

Furthermore, with regard to the Philippines' import-based surrogate values, we have disregarded import prices that we have reason to believe or suspect may be subsidized. We have reason to believe or suspect that prices of inputs from India, Indonesia, South Korea, and Thailand may have been subsidized. We have found in other proceedings that these countries maintain broadly available, non-industry-specific export subsidies and, therefore, it is reasonable to infer that all exports to all markets from these countries may be subsidized.[58]

Further, guided by the legislative history, it is the Department's practice not to conduct a formal investigation to ensure that such prices are not subsidized.[59] Rather, the Department bases its decision on information that is available to it at the time it makes its determination.[60] Therefore, we have not used prices from these countries in calculating the Philippines' import-based surrogate values. Additionally, we disregarded prices from NME countries. Finally, imports that were labeled as originating from an "unspecified" country were excluded from the average value, because the Department could not be certain that they were not from either an NME country or a country with general export subsidies.[61]

Pursuant to 19 CFR 351.408(c)(1), when a respondent sources inputs from an ME supplier in meaningful quantities (*i.e.,* not insignificant quantities), we use the actual price paid by respondent for those inputs, except when prices may have been distorted by findings of dumping by the PRC and/or subsidies.[62] Where we find ME purchases to be of significant quantities (*i.e.,* 33 percent or more), in accordance with our statement of policy as outlined in *Antidumping Methodologies: Market Economy Inputs,*[63] we use the actual purchases of these inputs to value the inputs. Where the quantity of the reported input purchased from ME suppliers is below 33 percent of the total volume of the input purchased from all sources during the POI, and were otherwise valid, we weight-average the ME input's purchase price with the appropriate surrogate value for the input according to their respective shares of the reported total volume of purchases.[64] Where appropriate, we add freight to the ME prices of inputs.

Layo Wood, Yuhua and the Samling Group all claimed that certain of their reported raw material inputs were sourced from an ME country and paid for in ME currencies. Because information reported by Yuhua and Samling Group demonstrates that they each purchased significant quantities (*i.e.,* 33 percent or more) of certain inputs from market economy suppliers, the Department used each respondent's actual market economy purchase prices to value each of their FOPs for those inputs.[65] Where appropriate, freight expenses were added to the market economy prices of these inputs.

Because Layo Wood was unable to demonstrate that it purchased its inputs from ME sources, the Department has valued all of Layo Wood's inputs using surrogate values.

On May 14, 2010, the Court of Appeals for the Federal Circuit ("CAFC) in *Dorbest Ltd.* v. *United States,* 604 F.3d 1363, 1372 (CAFC 2010) ("Dorbest IV"), found that the regression-based method for calculating wage rates, as stipulated by 19 CFR 351.408(c)(3), uses data not permitted by the statutory requirements laid out in section 773 of the Act (*i.e.,* 19 U.S.C. 1677b(c)). The Department is continuing to evaluate options for determining labor values in light of the recent CAFC decision. *See Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor; Request for*

[55] *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam,* 69 FR 42672, 42682 (July 16, 2004), unchanged in *Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of Vietnam,* 69 FR 71005 (December 8, 2004).

[56] *See* Surrogate Value Memorandum.

[57] *See, e.g., Kitchen Racks,* 74 FR at 9600.

[58] *See Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China,* 69 FR 20594 (April 16, 2004), and accompanying Issues and Decision Memorandum at Comment 7; *see, also, Carbazole Violet Pigment 23 from India: Final Results of the Expedited Five-year (Sunset) Review of the Countervailing Duty Order,* 75 FR 13257 (March 19, 2010), and accompanying Issues and Decision Memorandum at pages 4–5; *Certain Cut-to-Length Carbon Quality Steel Plate from Indonesia: Final Results of Expedited Sunset Review,* 70 FR 45692 (August 8, 2005), and accompanying Issues and Decision Memorandum at page 4; *Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review,* 74 FR 2512 (January 15, 2009), and accompanying Issues and Decision Memorandum at pages 17, 19–20; *Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products from Thailand,* 66 FR 50410 (October 3, 2001), and accompanying Issues and Decision Memorandum at page 23.

[59] *See* Omnibus Trade and Competitiveness Act of 1988, Conference Report to accompany H.R. Rep. 100–576 at 590 (1988) reprinted in 1988 U.S.C.C.A.N. 1547, 1623–24; *see also Preliminary Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People's Republic of China,* 72 FR 30758 (June 4, 2007) unchanged in *Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People's Republic of China,* 72 FR 60632 (October 25, 2007).

[60] *See Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value,* 73 FR 24552, 24559 (May 5, 2008), unchanged in *Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 73 FR 55039 (September 24, 2008).

[61] *See id.*

[62] *See Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27366 (May 19, 1997).

[63] *See Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments,* 71 FR 61716, 61717 (October 19, 2006) ("*Antidumping Methodologies: Market Economy Inputs*").

[64] *See Antidumping Methodologies: Market Economy Inputs,* 71 FR at 61718.

[65] *See id.* at 71 FR 61717.

Comment, 76 FR 9544 (February 18, 2011). However, for this preliminary determination we have calculated an hourly wage rate to use in valuing respondents' reported labor input by averaging industry-specific earnings and/or wages in countries that are economically comparable to the PRC and that are significant producers of comparable merchandise.

For the preliminary determination of this investigation, the Department is valuing labor using a simple average industry-specific wage rate using earnings or wage data reported under Chapter 5B by the International Labor Organization ("ILO"). To achieve an industry-specific labor value, we relied on industry-specific labor data from the countries we determined to be both economically comparable to the PRC, and significant producers of comparable merchandise. A full description of the industry-specific wage rate calculation methodology is provided in the Surrogate Value Memorandum. The Department calculated a simple average industry-specific wage rate of $1.15 for this preliminary determination. Specifically, for this review, the Department has calculated the wage rate using a simple average of the data provided to the ILO under Sub-Classification 20 of the ISIC-Revision 3 standard by countries determined to be both economically comparable to the PRC and significant producers of comparable merchandise. The Department finds the two-digit description under ISIC-Revision 3 ("Manufacture of wood and of products of wood and cork, except furniture; manufacture of articles of straw and plaiting materials") to be the best available wage rate surrogate value on the record because it is specific and derived from industries that produce merchandise comparable to the subject merchandise. Consequently, we averaged the ILO industry-specific wage rate data or earnings data available from the following countries found to be economically comparable to the PRC and are significant producers of comparable merchandise: Philippines, Egypt, Indonesia, Ukraine, Jordan, Thailand, Ecuador and Peru. For further information on the calculation of the wage rate, *see* Surrogate Values Memorandum.

We valued truck freight expenses using a per-unit average rate for Indian truck freight calculated from data on the Infobanc Web site: *http://www.infobanc.com/logistics/logtruck.htm.*[66] The logistics section of this Web site contains inland freight truck rates between many large Indian cities. We used this source because there were no reliable Philippine data on the record with which to value truck freight.

We valued electricity using contemporaneous Philippine data from *The Cost of Doing Business in Camarines Sur* available at the Philippine government's Web site for the province: *http://www.camarinessur.gov.ph.* These data pertained only to industrial consumption.

To value factory overhead, selling, general, and administrative expenses, and profit, we used audited financial statements from the following producers of comparable merchandise in the Philippines: Davao Panels Enterprises, Inc., Megaplywood Corporation, Premium Plywood Manufacturing Corporation and Winlex Marketing Corporation, and, each covering the fiscal year ending December 2009. The Department may consider other publicly available financial statements for the final determination, as appropriate.

Currency Conversion

Where necessary, we made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Verification

As provided in section 782(i)(1) of the Act, we intend to verify the information from Layo Wood, Yuhua and the Samling Group.

Combination Rates

In the *Initiation Notice,* the Department stated that it would calculate combination rates for respondents that are eligible for a separate rate in this investigation.[68] This practice is described in Policy Bulletin 05.1.

Preliminary Determination

The weighted-average dumping margins are as follows:

Exporter	Producer	Weighted average margin
Zhejiang Layo Wood Industry Co., Ltd	Zhejiang Layo Wood Industry Co., Ltd	* 0.00
The Samling Group **	The Samling Group **	10.88
Zhejiang Yuhua Timber Co., Ltd	Zhejiang Yuhua Timber Co., Ltd	* 0.00
Jiaxing Brilliant Import & Export Co., Ltd	Zhejiang Layo Wood Industry Co., Ltd	10.88
MuDanJiang Bosen Wood Industry Co., Ltd	MuDanJiang Bosen Wood Industry Co., Ltd	10.88
MuDanJiang Bosen Wood Industry Co., Ltd	Dun Hua Sen Tai Wood Co., Ltd	10.88
Huzhou Chenghang Wood Co., Ltd	Huzhou Chenghang Wood Co., Ltd	10.88
Hangzhou Hanje Tec Co., Ltd	Zhejiang Jiechen Wood Industry Co., Ltd	10.88
Nakahiro Jyou Sei Furniture (Dalian) Co., Ltd	Nakahiro Jyou Sei Furniture (Dalian) Co., Ltd	10.88
Shenyang Haobainian Wooden Co., Ltd	Shenyang Sende Wood Co., Ltd	10.88
Shenyang Haobainian Wooden Co., Ltd	Shenyang Haobainian Wooden Co., Ltd	10.88
Shenyang Haobainian Wooden Co., Ltd	Shanghai Demeijia Wooden Co., Ltd	10.88
Dalian Dajen Wood Co., Ltd	Dalian Dajen Wood Co., Ltd	10.88
HaiLin LinJing Wooden Products, Ltd	HaiLin LinJing Wooden Products, Ltd	10.88
Dun Hua Sen Tai Wood Co., Ltd	Dun Hua Sen Tai Wood Co., Ltd	10.88
Dunhua Jisheng Wood Industry Co., Ltd	Dunhua Jisheng Wood Industry Co., Ltd	10.88
Hunchun Forest Wolf Industry Co., Ltd	Hunchun Forest Wolf Industry Co., Ltd	10.88
Guangzhou Panyu Southern Star Co., Ltd	Guangzhou Jiasheng Timber Industry Co., Ltd	10.88
Nanjing Minglin Wooden Industry Co., Ltd	Nanjing Minglin Wooden Industry Co., Ltd	10.88
Zhejiang Fudeli Timber Industry Co., Ltd.	Zhejiang Fudeli Timber Industry Co., Ltd	10.88
Suzhou Dongda Wood Co., Ltd	Suzhou Dongda Wood Co., Ltd	10.88
Guangzhou Pan Yu Kang Da Board Co., Ltd	Guangzhou Pan Yu Kang Da Board Co., Ltd	10.88

[66] *See* Samling Group Surrogate Value Suggestions, submitted March 15, 2011, at Exhibit 10.

[68] *See Initiation Notice,* 75 FR at 22113–14.

Exporter	Producer	Weighted average margin
Kornbest Enterprises Ltd	Guangzhou Pan Yu Kang Da Board Co., Ltd	10.88
Metropolitan Hardwood Floors, Inc	Dalian Huilong Wooden Products Co., Ltd	10.88
Metropolitan Hardwood Floors, Inc	Mudanjiang Bosen Wood Co., Ltd	10.88
Metropolitan Hardwood Floors, Inc	Nakahiro Jyou Sei Furniture (Dalian) Co., Ltd	10.88
Metropolitan Hardwood Floors, Inc	Hunchun Forest Wolf Wooden Industry Co., Ltd	10.88
Metropolitan Hardwood Floors, Inc	Kemian Wood Industry (Kunshan) Co., Ltd	10.88
Metropolitan Hardwood Floors, Inc	Shenyang Haobainian Wooden Co., Ltd	10.88
Zhejiang Longsen Lumbering Co., Ltd	Zhejiang Longsen Lumbering Co., Ltd	10.88
Xinyuan Wooden Industry Co., Ltd	Xinyuan Wooden Industry Co., Ltd	10.88
Dasso Industrial Group Co., Ltd	Dasso Industrial Group Co., Ltd	10.88
Hong Kong Easoon Wood Technology Co., Ltd	Dasso Industrial Group Co., Ltd	10.88
Armstrong Wood Products Kunshan Co., Ltd	Armstrong Wood Products Kunshan Co., Ltd	10.88
Baishan Huafeng Wooden Product Co., Ltd	Baishan Huafeng Wooden Product Co., Ltd	10.88
Changbai Mountain Development and Protection Zone Hongtu Wood Industry Co., Ltd.	Changbai Mountain Development and Protection Zone Hongtu Wood Industry Co., Ltd.	10.88
Changzhou Hawd Flooring Co., Ltd	Changzhou Hawd Flooring Co., Ltd	10.88
Dalian Jiuyuan Wood Industry Co., Ltd	Dalian Jiuyuan Wood Industry Co., Ltd	10.88
Dalian Penghong Floor Products Co., Ltd	Dalian Penghong Floor Products Co., Ltd	10.88
Dongtai Fuan Universal Dynamics LLC	Dongtai Fuan Universal Dynamics LLC	10.88
Dunhua City Dexin Wood Industry Co., Ltd	Dunhua City Dexin Wood Industry Co., Ltd	10.88
Dunhua City Hongyuan Wood Industry Co., Ltd	Dunhua City Hongyuan Wood Industry Co., Ltd	10.88
Dunhua City Jisen Wood Industry Co., Ltd	Dunhua City Jisen Wood Industry Co., Ltd	10.88
Dunhua City Wanrong Wood Industry Co., Ltd	Dunhua City Wanrong Wood Industry Co., Ltd	10.88
Fusong Jinlong Wooden Group Co., Ltd	Fusong Jinlong Wooden Group Co., Ltd	10.88
Fusong Qianqiu Wooden Product Co., Ltd	Fusong Qianqiu Wooden Product Co., Ltd	10.88
GTP International	Jiangsu Senmao Bamboo and Wood Industry Co., Ltd	10.88
GTP International	Jiafeng Wood (Suzhou) Co., Ltd	10.88
GTP International	Suzhou Dongda Wood Co., Ltd	10.88
GTP International	Kemian Wood Industry (Kunshan) Co., Ltd	10.88
Guangdong Yihua Timber Industry Co., Ltd	Guangdong Yihua Timber Industry Co., Ltd	10.88
HaiLin LinJing Wooden Products, Ltd	HaiLin LinJing Wooden Products, Ltd	10.88
Huzhou Fulinmen Imp & Exp. Co., Ltd	Huzhou Fulinmen Wood Floor Co., Ltd	10.88
Huzhou Fuma Wood Bus. Co., Ltd	Huzhou Fuma Wood Bus. Co., Ltd	10.88
Jiafeng Wood (Suzhou) Co., Ltd	Jiafeng Wood (Suzhou) Co., Ltd	10.88
Jiashan Hui Jia Le Decoration Material Co., Ltd	Jiashan Hui Jia Le Decoration Material Co., Ltd	10.88
Jilin Forest Industry Jinqiao Flooring Group Co., Ltd	Jilin Forest Industry Jinqiao Flooring Group Co., Ltd	10.88
Karly Wood Product Limited	Karly Wood Product Limited	10.88
Kunshan Yingyi-Nature Wood Industry Co., Ltd	Kunshan Yingyi-Nature Wood Industry Co., Ltd	10.88
Puli Trading Ltd	Baiying Furniture Manufacturer Co., Ltd	10.88
Shanghai Eswell Timber Co. Ltd	Shanghai Eswell Timber Co. Ltd	10.88
Shanghai Lairunde Wood Co., Ltd	Shanghai Lairunde Wood Co., Ltd	10.88
Shanghai New Sihe Wood Co., Ltd	Shanghai New Sihe Wood Co., Ltd	10.88
Shanghai Shenlin Corporation	Shanghai Shenlin Corporation	10.88
Shenzhenshi Huanwei Woods Co., Ltd	Shenzhenshi Huanwei Woods Co., Ltd	10.88
Vicwood Industry (Suzhou) Co., Ltd	Vicwood Industry (Suzhou) Co., Ltd	10.88
Xiamen Yung De Ornament Co., Ltd	Xiamen Yung De Ornament Co., Ltd	10.88
Xuzhou Shenghe Wood Co., Ltd	Xuzhou Shenghe Wood Co., Ltd	10.88
Yixing Lion-King Timber Industry Co., Ltd	Yixing Lion-King Timber Industry Co., Ltd	10.88
Jiangsu Simba Flooring Industry Co., Ltd	Yixing Lion-King Timber Industry Co., Ltd	10.88
Zhejiang Biyork Wood Co., Ltd	Zhejiang Biyork Wood Co., Ltd	10.88
Zhejiang Dadongwu GreenHome Wood Co., Ltd	Zhejiang Dadongwu GreenHome Wood Co., Ltd	10.88
Zhejiang Desheng Wood Industry Co., Ltd	Zhejiang Desheng Wood Industry Co., Ltd	10.88
Zhejiang Shiyou Timber Co., Ltd	Zhejiang Shiyou Timber Co., Ltd	10.88
Zhejiang Tianzhen Bamboo & Wood Development Co., Ltd	Zhejiang Tianzhen Bamboo & Wood Development Co., Ltd	10.88
Chinafloors Timber (China) Co. Ltd	Chinafloors Timber (China) Co. Ltd	10.88
Shanghai Lizhong Wood Products Co., Ltd	Shanghai Lizhong Wood Products Co., Ltd	10.88
Fine Furniture (Shanghai) Limited	Fine Furniture (Shanghai) Limited	10.88
Huzhou Sunergy World Trade Co. Ltd	Zhejiang Haoyun Wood Co., Ltd	10.88
Huzhou Sunergy World Trade Co. Ltd	Nanjing Minglin Wooden Industry Co., Ltd	10.88
Huzhou Sunergy World Trade Co. Ltd	Zhejiang AnJi XinFeng Bamboo & Wood Co., Ltd	10.88
Huzhou Jesonwood Co., Ltd	Zhejiang Jeson Wood Co., Ltd	10.88
Huzhou Jesonwood Co., Ltd	Huzhou Jesonwood Co., Ltd	10.88
A&W (Shanghai) Woods Co., Ltd	A&W (Shanghai) Woods Co., Ltd	10.88
A&W (Shanghai) Woods Co., Ltd	Suzhou Anxin Weiguang Timber Co., Ltd	10.88
Fu Lik Timber (HK) Company Limited	Guangdong Fu Lin Timber Technology Limited	10.88
Yekalon Industry, Inc./Sennorwell International Group (Hong Kong) Limited.	Jilin Xinyuan Wooden Industry Co., Ltd	10.88
Kemian Wood Industry (Kunshan) Co., Ltd	Kemian Wood Industry (Kunshan) Co., Ltd	10.88
Dalian Kemian Wood Industry Co., Ltd	Dalian Kemian Wood Industry Co., Ltd	10.88
Dalian Huilong Wooden Products Co., Ltd	Dalian Huilong Wooden Products Co., Ltd	10.88
Jiangsu Senmao Bamboo and Wood Industry Co., Ltd	Jiangsu Senmao Bamboo and Wood Industry Co., Ltd	10.88

Exporter	Producer	Weighted average margin
PRC-wide Entity		82.65

* *de minimis.*
** The Samling Group consists of the following companies: Baroque Timber Industries (Zhongshan) Co., Ltd, Riverside Plywood Corporation, Samling Elegant Living Trading (Labuan) Limited, Samling Riverside Co., Ltd, and Suzhou Times Flooring Co., Ltd

Disclosure

We will disclose the calculations performed to parties in this proceeding within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Suspension of Liquidation

In accordance with section 733(d) of the Act, we will instruct U.S. Customs and Border Protection ("CBP") to suspend liquidation of all appropriate entries of multilayered wood flooring from the PRC as described in the "Scope of Investigation" section, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice 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 normal value 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 preliminary 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.

International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our preliminary affirmative determination of sales at LTFV. Section 735(b)(2) of the Act requires the ITC to make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of multilayered wood flooring, or sales (or the likelihood of sales) for importation, of the merchandise under consideration within 45 days of our final determination.

Public Comment

CBP has indicated to the Department that imports of subject merchandise entering under HTSUS subheadings 4409.10.0500; 4409.10.2000; 4409.29.0515; 4409.29.0525; 4409.29.0535; 4409.29.0545; 4409.29.0555; 4409.29.0565; 4409.29.2530; 4409.29.2550; 4409.29.2560; 4418.71.1000; 4418.79.0000; and 4418.90.4605 would be incorrectly classified. Therefore we invite comment on whether those HTSUS subheadings should be eliminated from the scope description. These comments may be submitted to the Department no later than 20 days after the date of publication of this notice, and rebuttal comments no later than five days later.

Case briefs or other written comments for all other, non-scope related issues, may be submitted to the Assistant Secretary for Import Administration no later than seven days after the date on which the final verification report is issued in this proceeding, and rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.[69] A table of contents, list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. This summary should be limited to five pages total, including footnotes. The Department also requests that parties provide an electronic copy of its case and rebuttal brief submissions in either a "Microsoft Word" or a "pdf" format.

In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Interested parties, who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days after the date of publication of this notice.[70] Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. If a request for a hearing is made, we intend to hold the hearing at the U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230, at a time and location to be determined.[71] Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

We will make our final determination no later than 135 days after the date of publication of this preliminary determination, pursuant to section 735(a)(2) of the Act.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act.

Dated: May 19, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–13097 Filed 5–25–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 11–04]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 11–04 with attached transmittal, and policy justification.

Dated: May 23, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

[69] *See* 19 CFR 351.309.

[70] *See* 19 CFR 351.310(c).

[71] *See* 19 CFR 351.310.

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

MAY 12 2011

The Honorable John A. Boehner
Speaker of the House
U.S. House of Representatives
Washington, DC 20615

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 11-04, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance to Pakistan for defense articles and services estimated to cost $62 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Richard A. Genaille, Jr.
Deputy Director

Enclosures:
1. Transmittal
2. Policy Justification

Transmittal No. 11-04

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) Prospective Purchaser: Pakistan

(ii) Total Estimated Value:

Major Defense Equipment*	$ 0 million
Other	$62 million
TOTAL	$62 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: a Foreign Military Sale Order (FMSO) to provide funds for blanket order requisitions FMSO II, under the Cooperative Logistics Supply Support Agreement (CLSSA) for spare parts in support of F-16, C-130, T-37 and T-33 aircraft and other aircraft or systems/subsystems of U.S. origin in the inventory of the Pakistan Air Force.

(iv) Military Department: Air Force (KCP, Amendment 5)

(v) Prior Related Cases, if any: None

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: None

(viii) Date Report Delivered to Congress: MAY 12 2011

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Pakistan – Cooperative Logistics Supply Support Agreement (CLSSA) Foreign Military Sale Order (FMSO)II Support

The Government of Pakistan requests a Foreign Military Sale Order (FMSO) to provide funds for blanket order requisitions FMSO II, under the Cooperative Logistics Supply Support Agreement (CLSSA) for spare parts in support of F-16, C-130, T-37 and T-33 aircraft and other aircraft or systems/subsystems of U.S. origin in the inventory of the Pakistan Air Force. The estimated cost is $62 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country that has been, and continues to be, an important force for political stability and economic progress in Central Asia.

The uninterrupted supply of spare parts will allow Pakistan to keep its aircraft fleet at the highest state or readiness.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

Procurement of these items will be from many contractors providing similar items to the U.S. forces. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this sale will not require the assignment of any additional U.S. government or contractor representatives to Pakistan.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

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[FR Doc. 2011–13072 Filed 5–25–11; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 11–03]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 11–03 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: May 23, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer,

Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

The Honorable John A. Boehner
Speaker of the House
U.S. House of Representatives
Washington, DC 20615

MAY 12 2011

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 11-03, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance to Malaysia for defense articles and services estimated to cost $72 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Richard A. Genaille, Jr.
Deputy Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

Transmittal No. 11-03

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) Prospective Purchaser: Malaysia

(ii) Total Estimated Value:

Major Defense Equipment*	$22 million
Other	$50 million
TOTAL	$72 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: Procurement and integration of a Mid Life Upgrade to existing F/A 18D aircraft including six (6) AN/ASQ-228 Advanced Targeting Forward Looking Infrared (ATFLIR) Pods. Also included are software development, system integration and testing, test sets, aircrew and maintenance training, support equipment, spares and repair parts, publications, technical documentation, U.S. Government and contractor technical, logistics, engineering support services, and other related elements of program support.

(iv) Military Department: Navy (LBE Amendment 1)

(v) Prior Related Cases, if any:
FMS Case LBE-$29M-29 May 2009
FMS Case SAJ-$623M-22 Dec 1993

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached

(viii) Date Report Delivered to Congress: MAY 12 2011

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Malaysia – Advanced Targeting Forward Looking Infrared (ATFLIR)

The Government of Malaysia has requested the procurement and integration of a Mid Life Upgrade to existing F/A-18D aircraft including six (6) AN/ASQ-228 ATFLIR Pods. Also included are software development, system integration and testing, test sets, aircrew and maintenance training, support equipment, spares and repair parts, publications, technical documentation, U.S. Government and contractor technical, logistics, engineering support services, and other related elements of program support. The estimated cost is $72 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country that has been, and continues to be, an important force for political stability and economic progress in East Asia.

Malaysia needs these assets to support future coalition operations and aircraft interoperability with the U.S. and other regional partners. This will upgrade the current FLIR pod to a current configuration, reducing obsolescence issues, and aligning the Malaysian Navy with functionality similar to the U.S. Navy.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractor will be The Boeing Company in St. Louis, Missouri.

There are no known offset agreements proposed in connection with this potential sale.

Implementation of this sale will require the temporary travel of approximately eight contractor representatives to Malaysia for installation, system validation, and verification of this system along with other upgrade capabilities being integrated and installed simultaneously.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 11-03

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The APX-111 Combined Interrogator/Transponder (CIT) is classified Secret. The CIT is a complete MARK-XII identification system compatible with Identification Friend or Foe Modes 1, 2, 3/A, C, 4 and S, with growth to mode 5. As a transponder, the CIT is capable of replying to interrogation modes 1, 2, 3/A, C (altitude) and secure mode 4. The Mode S Beacon System is a combined data link and Secondary Surveillance Radar (SSR) system. Mode S provides air surveillance using a data link with a permanent unique aircraft address. Selective Interrogation provides higher data integrity, reduced interference levels, increased air traffic capacity, and adds an air-to-ground data link.

2. The AN/ASQ-228 Advanced Targeting Forward Looking Infrared (ATFLIR) Pod is classified Secret. The ATFLIR is the first bottom-up, fully developed and integrated 3rd generation tactical aircraft FLIR. It includes advances in targeting laser designation, range finding, and target coordinate generation capabilities over fielded Gen I/II systems. The Targeting FLIR thermal imaging system users a 3rd generation large format (640X480) staring focal plane array detector operating in the 3 to 5 micrometer atmospheric transmission band. The Electro-Optic sensor portion is a visible light imaging system using a charge coupled device focal plan array operating in the 0.5 to 0.9 micrometer transmission range. It combines the functions of two legacy pod systems into one pod. To improve serviceability, ATFLIR has fewer parts than many previous systems. The system is housed in a pod which is mounted on the aircraft's left fuselage station.

3. The Joint Mission Planning System (JMPS) with Unique Planning Components (UPC) and GPS is classified Secret. JMPS will provide mission planning capability for support of military aviation operations. It will also provide support for unit-level mission planning for all phases of military flight operations and have the capability to provide necessary mission data for the aircrew. JMPS will support downloading of data to electronic data transfer devices for transfer to aircraft and weapon systems. JMPS for a specific aircraft type will consist of basic planning tools called the Joint Mission Planning Environment (JMPE) mated with a UPC provided by the aircraft program. In addition, UPCs will be required for specific weapons, communication devices, and moving map displays in order for proper RMAF mission planning.

4. The Tactical Aircraft Moving Map Capability (TAMMAC) with Terrain Awareness Warning System (TAWS) is classified Secret. The TAMMAC Digital Map Computer (DMC) is a system-level solution that offers the highest overall performance. In addition to the feature-rich software and high-performance graphics accelerator, it bundles in mass storage and processing speed to provide the aircrew with an easily assimilated graphical presentation of the aircraft's present position and the relative positions of targets, threats, terrain features, planned mission flight path, no fly zones, safe

bases, and other objects. Its advanced map capabilities that increase mission effectiveness include presentation of contour line, slope shading, dynamic elevation banding, threat inter-visibility, cultural features, variable scaling, and overlays. The TAMMAC map allows the aircrew to display fire support coordination measures, vertical obstructions, and Digital Aeronautical Flight Information File (DAFIF) information. The TAWS enhancement will provide Hornet pilots with a terrain awareness and avoidance system integrated with the real-time-in-the-cockpit digital map display provided by TAMMAC DMC.

5. The AN/ALR-67(V)2 Hot Quad Receiver with software updates is classified Secret. The AN/ALR-67 countermeasures warning and control system is the standard threat warning system for tactical aircraft. The system detects, identifies, and displays radars and radar-guided weapon systems. The system also coordinates its operation with onboard fire-control radars, data link, jammers, missile detection systems and anti-radiation missiles. The system is comprised of four small spiral high-band antennas to provide 360 degree azimuth Radio Frequency coverage; four wideband, high-band quadrant receiver amplifiers; one low-band array plus receiver to provide 360 degree azimuth low-band coverage; one narrowband super heterodyne receiver for signal analysis functions; twin Central Processing Units; an azimuth display unit (ADU) and a control unit. The purpose of the Hot Quad upgrade is to increase the present performance of the receiver radar. The modification replaces the Quadrant Radio Frequency Amplifier with a new amplifier (Hot Quad) that has higher gain and lower noise to improve pulse and continuous wave (CW) emitter detection range. This change will improve detection and so survivability of the aircraft and crew.

6. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in development of a system with similar or advanced capabilities.

[FR Doc. 2011–13077 Filed 5–25–11; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 11–01]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 11–01 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: May 19, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

MAY 17 2011

The Honorable John A. Boehner
Speaker
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 11-01, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance to Morocco for defense articles and services estimated to cost $50 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Richard A. Genaille, Jr.
Deputy Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology
4. Regional Balance (Classified Document Provided under Separate Cover)

Transmittal No. 11-01

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) Prospective Purchaser: Morocco

(ii) Total Estimated Value:

Major Defense Equipment*	$ 25 million
Other	$ 25 million
TOTAL	$ 50 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: 20 AIM-9X-2 SIDEWINDER Block II All-Up-Round Missiles, 10 CATM-9X-2 Captive Air Training Missiles, 8 CATM-9X-2 Block II Missile Guidance Units, and 8 AIM-9X-2 Block II Tactical Guidance Units, 2 Dummy Air Training Missiles, containers, missile support and test equipment, provisioning, spare and repair parts, personnel training and training equipment, publications and technical data, U.S. Government and contractor technical assistance and other related logistics support.

(iv) Military Department: Navy (AAK)

(v) Prior Related Cases, if any: None

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached

(viii) Date Report Delivered to Congress: MAY 17 2011

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Morocco – AIM-9X-2 SIDEWINDER Missiles

The Government of Morocco has requested a possible sale of 20 AIM-9X-2 SIDEWINDER Missiles, 10 CATM-9X-2 Captive Air Training Missiles All-Up-Round Block II Missiles, 8 CATM-9X-2 Block II Missile Guidance Units, and 8 AIM-9X-2 Block II Tactical Guidance Units, 2 Dummy Air Training Missiles, containers, missile support and test equipment, provisioning, spare and repair parts, personnel training and training equipment, publications and technical data, U.S. Government and contractor technical assistance and other related logistics support. The estimated cost is $50 million.

The proposed sale will contribute to the foreign policy and national security objectives of the United States by supporting Morocco's legitimate need for its own self-defense. Morocco is one of the most stable and pro-Western of the Arab states, and the U.S. remains committed to a long-term relationship with Morocco.

The Royal Moroccan Air Force is modernizing its fighter aircraft to better support its own air defense needs. The proposed sale of AIM-9X missiles will greatly enhance Morocco's interoperability with the U.S. and other NATO nations, making it a more valuable partner in an increasingly important area of the world.

The proposed sale of this weapon system will not alter the basic military balance in the region.

The prime contractor will be Raytheon Missile Systems Company in Tucson, Arizona. There are no known offset agreements in connection with this potential sale.

Implementation of this proposed sale will require travel of U.S. Government or contractor representatives to Morocco on a temporary basis for program technical support and management oversight.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 11-01

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The AIM-9X-2 SIDEWINDER Block II Missile represents a substantial increase in missile acquisition and kinematics performance over the AIM-9M and replaces the AIM-9X-1 Block I missile configuration. The missile includes a high off bore-sight seeker, enhanced countermeasure rejection capability, low drag/high angle of attack airframe and the ability to integrate the Helmet Mounted Cueing System. The software algorithms are the most sensitive portion of the AIM-9X-2 missile. The software continues to be modified via a pre-planned product improvement (P^3I) program in order to improve its counter-countermeasures capabilities. No software source code or algorithms will be released. The missile is classified as Confidential.

2. The AIM-9X-2 will result in the transfer of sensitive technology and information. The equipment, hardware, and documentation are classified Confidential. The software and operational performance are classified Secret. The seeker/guidance control section and the target detector are Confidential and contain sensitive state-of-the-art technology. Manuals and technical documentation that are necessary or support operational use and organizational management are classified up to Secret. Performance and operating logic of the counter-countermeasures circuits are classified Secret. The hardware, software, and data identified are classified to protect vulnerabilities, design and performance parameters and similar critical information.

3. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures that might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

[FR Doc. 2011–13026 Filed 5–25–11; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Notice of Availability of Final Environmental Impact Statement for the Proposed Folsom South of U.S. Highway 50 Specific Plan Project, in Sacramento County, CA, Corps Permit Application No. SPK–2007–02159

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of availability.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA), the U.S. Army Corps of Engineers (USACE), Sacramento District has prepared a Final Environmental Impact Statement (FEIS) for the Folsom South of U.S. Highway 50 Specific Plan Project, a proposed master-planned, mixed use development within southeastern Sacramento County.

On July 2, 2010, USACE published a notice in the **Federal Register** (75 FR

38500), informing the public of the availability of the Draft Environmental Impact Statement (DEIS) that analyzes the potential effects of implementing each of six (6) on-site land-use and eleven (11) off-site water supply alternative scenarios for a mixed-use development in the approximately 3,502-acre Folsom South of U.S. Highway 50 Specific Plan Project Area.

The FEIS has been prepared to respond to comments received from agencies, organizations, and members of the public on the 2010 DEIS, and to present corrections, revisions, and other clarifications and amplifications of the 2010 DEIS, including minor project modifications made in response to these comments and as a result of the applicants' ongoing planning efforts.

The FEIS has been prepared as joint documents with the City of Folsom (City). The City is the local agency responsible for preparing an Environmental Impact Report in compliance with the California Environmental Quality Act (CEQA). The USACE is the lead Federal agency responsible for the FEIS and information contained in the DEIS and FEIS serves as the basis for a decision regarding issuance of an individual permit under Section 404 of the Clean Water Act. It also provides information for Federal, state and local agencies having jurisdictional responsibility for affected resources. All incoming comments on the FEIS will be considered by USACE and responses will be provided for substantive issues raised which have not been addressed in the DEIS or FEIS.

DATES: All written comments must be postmarked on or before June 26, 2011.

ADDRESSES: Comments may be submitted in writing to: Lisa M. Gibson, U.S. Army Corps of Engineers, Sacramento District, Regulatory Division; 650 Capitol Mall, Suite 5–200, Sacramento, CA 95814, or via e-mail to *Lisa.M.Gibson2@usace.army.mil.*

FOR FURTHER INFORMATION CONTACT: Lisa M. Gibson, (916) 557–5288, or via e-mail at *Lisa.M.Gibson2@usace.army.mil.*

SUPPLEMENTARY INFORMATION: The South Folsom Property Owners Group, the project applicants, are seeking adoption by the City of the proposed SPA project and associated entitlements. The City and the South Folsom Property Owners Group are also seeking authorization from USACE for the placement of dredged or fill material into waters of the United States pursuant to Section 404 of the Clean Water Act. The Proposed Project includes 10,210 residential units at various densities on a total of 1,477.2 acres; 362.8 acres designated for commercial and industrial use, including a regional shopping center; public/quasi-public uses; elementary, middle, and high schools on 179.3 acres; 121.7 acres of community and neighborhood parks; stormwater detention basins; 1,053.1 acres of open-space areas and open-space preserves; and major roads with landscaping. In addition, the proposed project includes the construction of several off-site infrastructure facilities, including intersection expansions to allow access to and from U.S. 50 and the SPA, an overpass of U.S. 50, two roadway connections and sewer pipelines from the SPA into El Dorado Hills, a sewer force main connection to the existing City system, a detention basin and water pipelines and facilities. The SPA contains approximately 84.94 acres of waters of the U.S. The proposed land-use plan would involve the discharge of fill material into approximately 39.50 acres of waters of the U.S., and indirect impacts to 0.29 acres of waters of the U.S. resulting from fragmentation of existing waters. In addition, the proposed land-use plan involves the preservation of approximately 44.19 acres of waters of the U.S., concentrated primarily on the Alder Creek corridor and adjacent tributaries and wetlands.

For the proposed off-site water supply/alignment for the SPA, the City is proposing off-site water facilities that would involve the permanent assignment to the City of the contractual entitlements to Central Valley Project (CVP) contract entitlement water, totaling not more than 8,000 acre-feet per year (AFY) from the Natomas Central Mutual Water Company (NCMWC), diverting the water supply from the Sacramento River and conveying the water to the SPA. The proposed water supply would also involve the City purchasing dedicated capacity within the Freeport Regional Water Project (Freeport Project) from Sacramento County Water Agency (SCWA), which would serve as the point of diversion (POD) on the Sacramento River and partial conveyance pathway for not more than 6,000 AFY purchased from NCMWC. The City proposes to add the Freeport POD to the assigned CVP water to facilitate the diversion of these supplies at the existing Freeport Project diversion. The City proposes to pump and convey the assigned NCMWC CVP water supply through the Freeport Project diversion facility and conveyance pipeline to the point where SCWA and East Bay Municipal Utility District pipelines split. The City would then construct new water supply conveyance infrastructure from the bifurcation point to the SPA within an approximately 200-foot corridor. The corridor for the proposed construction of the water line and the proposed location for water treatment plants contains approximately 50.7 acres of waters of the U.S. The estimate of waters of the U.S. within the proposed water supply corridor was determined based on aerial photographs and National Wetland Inventory maps, and has not been field delineated or verified by USACE. Because the City has not yet completed project specific engineering details for the proposed off-site water supply/alignment, the exact impacts to waters of the U.S. cannot be determined. However, construction of the water supply infrastructure is expected to occur within an area of less than 100 feet in width, and, depending on which side of the corridor construction would occur, would impact an estimated 5.7 acres or 6.8 acres of waters of the U.S.

An electronic version of the FEIS may be viewed at the USACE, Sacramento District Web site: *http://www.spk.usace.army.mil/organizations/cespk-co/regulatory/EISs/EIS-index.html:* In addition, a hardcopy of the FEIS may also be reviewed at the Folsom Public Library, Georgia Murray Building, 411 Stafford Street, Folsom, California 95630.

Dated: May 12, 2011.

Andrew B. Kiger,

Lieutenant Colonel, U.S. Army, District Engineer.

[FR Doc. 2011–13050 Filed 5–25–11; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF EDUCATION

Notice of Submission for OMB Review

AGENCY: Department of Education.

ACTION: Comment Request.

SUMMARY: The Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, invites comments on the submission for the Office of Management and Budget (OMB) review as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

DATES: Interested persons are invited to submit comments on or before June 27, 2011.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725

17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or e-mailed to *oira_submission@omb.eop.gov* with a cc: To *ICDocketMgr@ed.gov.* Please note that written comments received in response to this notice will be considered public records.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The OMB is particularly interested in comments which: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: May 20, 2011.

Darrin A. King,

Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

Office of Management

Type of Review: New collection (request for a new OMB control number).

Title of Collection: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

OMB Control Number: 1880–New.

Agency Form Number(s): N/A.

Frequency of Responses: On Occasion.

Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 7,100.

Total Estimated Annual Burden Hours: 3,550.

Abstract: The information collection activity will garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

Feedback collected under this generic clearance will provide useful information, but it will not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: The target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential non-response bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

We received no comments in response to the 60-day notice published by OMB in the **Federal Register** on December 22, 2010 (75 FR 80542).[1]

Copies of the information collection submission for OMB review may be accessed from the *RegInfo.gov* Web site at *http://www.reginfo.gov/public/do/PRAMain* or from the Department's Web site at *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 4558. When you access the information collection, click on "Download Attachments " to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2011–13057 Filed 5–25–11; 8:45 am]

BILLING CODE 4000–01–P

[1] The 60-day notice included the following estimate of the aggregate burden hours for this generic clearance Federal-wide:

Average Expected Annual Number of Activities: 25,000.

Average Number of Respondents per Activity: 200.

Annual Responses: 5,000,000.

Frequency of Response: Once per request.

Average Minutes per Response: 30.

Burden Hours: 2,500,000.

DEPARTMENT OF EDUCATION

Applications for New Awards; Technical Assistance and Dissemination To Improve Services and Results for Children With Disabilities—National Assessment Center

AGENCY: Department of Education.

ACTION: Notice.

Overview Information

Technical Assistance and Dissemination To Improve Services and Results for Children with Disabilities—National Assessment Center.

Notice inviting applications for new awards for fiscal year (FY) 2011.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.326G.

DATES: *Applications Available:* May 26, 2011.

Deadline for Transmittal of Applications: July 11, 2011.

Deadline for Intergovernmental Review: September 8, 2011.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities program is to promote academic achievement and to improve results for children with disabilities by providing technical assistance (TA), supporting model demonstration projects, disseminating useful information, and implementing activities that are supported by scientifically based research.

Priority: In accordance with 34 CFR 75.105(b)(2)(v), this priority is from allowable activities specified in the statute or otherwise authorized in the statute (see sections 663 and 681(d) of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. 1463 and 1481(d)).

Absolute Priority: For FY 2011 and any subsequent year in which we make awards based on the list of unfunded applicants from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

Technical Assistance and Dissemination To Improve Services and Results for Children With Disabilities—National Assessment Center

Background

Federal and State laws over the past two decades have mandated the use of rigorous assessments aligned to academic content standards to improve accountability and ensure that students are acquiring the skills they need for success. Some laws and policies (*e.g.,* those involving alternate assessments, assessment accommodations, and disaggregated reporting of assessment data by subgroups) are intended to ensure that all students, including students with disabilities, participate in assessments and are included in accountability systems.

As a result of States' efforts in implementing Federal and State laws in this area, there are multiple ways for students with disabilities to participate in State assessments—general assessments, general assessments with accommodations, and alternate assessments that are based on alternate academic achievement standards, modified academic achievement standards, or grade-level academic achievement standards. Further, evidence suggests that: Instruction for students with disabilities is increasingly aligned with State academic content standards; assessment data are increasingly used to make educational decisions for these students; and participating in State assessments and being included in accountability systems may have positive effects on educational results for students with disabilities (National Council on Disability, 2008; Towles-Reeves, Kleinert, & Muhomba, 2009).

Despite the progress States have made in including students with disabilities in assessments and accountability systems, States continue to face challenges with issues such as integrating data from dissimilar tests (regular, accommodated, and alternate) into a single accountability system, and developing consistent State policies on assessment accommodations (Eckes & Swando, 2009; Center for Education Policy, 2009). In addition, the assessment landscape is changing as States adopt common, college- and career-ready academic content standards and develop new, valid, more instructionally useful and inclusive assessments aligned to these standards. The U.S. Department of Education has supported these efforts through programs such as the Race to the Top Assessment (RTTA) program, the State Assessments program, and the General Supervision Enhancement Grants-Alternate Academic Achievement Standards program (GSEG). However, developing and implementing new forms of assessments are challenging and time-consuming processes. For example, assessments developed under the RTTA program are required to be fully implemented statewide in consortia States no later than the 2014–2015 school year. During the next several years while these new large-scale assessments are being developed and implemented, States will need continued support to ensure that all students, including those with disabilities, are included in current assessments. Once the RTTA assessments are developed, States may need support in implementing them to ensure that all students, except for students with the most significant cognitive disabilities who are eligible to participate in alternate assessments based on alternate academic achievement standards in accordance with 34 CFR 200.6(a)(2), participate in these assessments (U.S. Department of Education, 2010).

Currently, the Office of Special Education Programs (OSEP) funds the National Center on Educational Outcomes (NCEO) at the University of Minnesota to address national, State, and local assessment issues related to students with disabilities. NCEO also assists OSEP by analyzing State assessment data submitted in the State Performance Plan/Annual Performance Reports (SPP/APR) required under IDEA. The priority established in this notice will support a new center to continue, update, and expand on NCEO's work by supporting States in the implementation of appropriate, high-quality assessments for students with disabilities, as well as by working with States to explore emerging issues such as growth models, universal design, and technology-based assessments for students with disabilities. In addition, if the center funded under this priority receives the two-year extension described under the heading "Extending the Project for a Fourth and Fifth Year" in this notice, it will assist States, as needed, in implementing the RTTA assessments to ensure that students with disabilities are included in the assessments and receive accommodations, as appropriate, and that assessment data are used to improve instruction and accountability for students with disabilities.

Priority

The purpose of this priority is to fund a cooperative agreement to support the establishment and operation of a National Assessment Center (Center) that will: (1) Provide technical assistance to States regarding the inclusion of students with disabilities in assessments and State accountability systems; (2) develop and implement leadership activities (*e.g.,* supporting communities of practice and convening national forums) to ensure that students with disabilities are included in and benefit from emerging approaches to assessment; (3) continue and update NCEO's work in conducting analyses of State SPP/APR assessment data; (4) collect, analyze, synthesize, and disseminate relevant information related to the assessment of students with disabilities; and (5) serve as a national resource for policymakers, administrators, teachers, advocates, parents, and the RTTA and GSEG consortia funded by the Department on the assessment of students with disabilities.

To be considered for funding under this absolute priority, applicants must meet the application requirements contained in this priority. Any project funded under this absolute priority also must meet the programmatic and administrative requirements specified in the priority.

Application Requirements. An applicant must include in its application—

(a) A logic model that depicts, at a minimum, the goals, activities, outputs, and outcomes of the proposed project. A logic model communicates how a project will achieve its outcomes and provides a framework for both the formative and summative evaluations of the project;

Note: The following Web sites provide more information on logic models: *http://www.researchutilization.org/matrix/logicmodel_resource3c.html* and *http://www.tadnet.org/model_and_performance*.

(b) A plan to implement the activities described in the *Project Activities* section of this priority;

(c) A plan, linked to the proposed project's logic model, for a formative evaluation of the proposed project's activities. The plan must describe how the formative evaluation will use clear performance objectives to ensure continuous improvement in the operation of the proposed project, including objective measures of progress in implementing the project and ensuring the quality of products and services;

(d) A budget for a summative evaluation to be conducted by an independent third party;

(e) A budget for attendance at the following:

(1) A one-day kick-off meeting to be held in Washington, DC, within four weeks after receipt of the award, and an annual planning meeting held in Washington, DC, with the OSEP Project Officer during each subsequent year of the project period.

(2) A three-day Project Directors' Conference in Washington, DC, during each year of the project period.

(3) A minimum of six two-day trips annually to attend Department briefings, Department-sponsored conferences, and other meetings, as approved by OSEP; and

(f) A line item in the proposed budget for an annual set-aside of five percent of the grant amount to support emerging needs that are consistent with the proposed project's activities, as those needs are identified in consultation with OSEP, and in coordination and collaboration with other related projects funded by the Department.

Note: With approval from the OSEP Project Officer, the Center must reallocate any remaining funds from this annual set-aside no later than the end of the third quarter of each budget period.

(g) In situations in which the applicant is also a grantee or subcontractor in the RTTA or GSEG programs, an assurance that the technical assistance the Center provides will not give undue favor or support to any particular project or activity in the RTTA or GSEG programs and will instead be based on a thorough review of the field and up-to-date research.

Project Activities. To meet the requirements of this priority, the Center, at a minimum, must conduct the following activities:

Knowledge Development Activities.

(a) Collect, analyze, synthesize, and disseminate relevant information regarding the assessment of students with disabilities, including on topics such as assessment accommodations, alternate assessments, formative assessments, universal design of assessments, technology-based assessments, assessing English learners with disabilities, methods for analyzing and reporting assessment data that include students with disabilities, implications of and best practices in using assessments aligned with common college- and career-ready academic content standards for students with disabilities, application of growth models in assessment programs that include students with disabilities, uses of assessment data that include students with disabilities to inform instructional programs, and the inclusion of students with disabilities in accountability systems. The type of information collected, analyzed, synthesized, and disseminated under this paragraph must include: Research findings, Federal and State policies, assessment data (*e.g.,* data posted on State Web sites or submitted to the Department), and other relevant resources. Presentation of research findings must include information on the strength of the research evidence, to the degree that the strength of evidence can be feasibly and validly determined.

(b) Conduct surveys to assess State needs and track State activities and trends related to students with disabilities and assessments, including as appropriate any of the topics listed in paragraph (a) of the *Knowledge Development Activities* section of the priority.

Technical Assistance and Dissemination Activities.

(a) Provide technical assistance to States regarding the inclusion of students with disabilities in assessments and accountability systems.

(b) Provide technical assistance, as needed, to States regarding the implementation of large-scale assessments developed by the RTTA and GSEG consortia funded by the Department. The delivery of this technical assistance may be contingent on the Center receiving the two-year extension discussed under the heading "*Extending the Project for a Fourth and Fifth Year*" in this notice.

(c) Provide technical assistance to States that include student performance on assessments as one of the factors they use to determine if a local educational agency (LEA):

(1) Meets the requirements and purposes of part B of IDEA;

(2) Needs assistance in implementing the requirements of part B of IDEA;

(3) Needs intervention in implementing the requirements of part B of IDEA; or

(4) Needs substantial intervention in implementing the requirements of part B of IDEA.

(d) Recruit and coordinate a cadre of experts that the Center will use to provide TA to States to assist them in—

(1) Including students with disabilities in rigorous, high-quality assessments that are aligned to academic content standards, including common college- and career-ready academic content standards; and

(2) Using assessment results in instructional decision-making to improve teaching and learning for students with disabilities.

(e) Maintain a Web site that meets government or industry-recognized standards for accessibility and that links to the Web site operated by the OSEP-funded Technical Assistance Coordination Center (TACC).

(f) Prepare and disseminate reports, documents, and other materials for specific audiences (as requested by OSEP) including policymakers, administrators, teachers, advocates, and parents on topics related to—

(1) Including students with disabilities in rigorous, high-quality assessments that are aligned to academic content standards, including common college- and career-ready standards; and

(2) Using assessment results in instructional decision-making to improve teaching and learning for students with disabilities.

In consultation with the OSEP Project Officer and the advisory committee established in accordance with paragraph (b) of the *Leadership and Coordination Activities* section of this priority, the Center must make selected reports, documents, and other materials available for parents in both English and Spanish.

(g) Use technological tools to increase the reach and impact of the Center's work.

Leadership and Coordination Activities.

(a) Compile and share data, as directed by OSEP, on States' APRs and updated SPPs for part B Indicator 3 "Assessment" by:

(1) Reviewing relevant sections of each State's APR and updated SPP and summarizing the data on Part B Indicator 3 "Assessment;"

(2) Developing a summary report for this indicator that includes information about States' progress in meeting targets for the indicator, as well as any revisions made to States' monitoring and data systems, measurement systems, or improvement strategies; and

(3) Providing these summary reports to OSEP in a timely manner and participating in OSEP-requested teleconferences to discuss the findings of the summary reports.

(b) Establish and maintain an advisory committee to review the activities and outcomes of the Center and provide programmatic support and advice throughout the project period. At a minimum, the advisory committee must meet on an annual basis in Washington, DC and include persons with expertise in assessment, the education of students with disabilities, and educational policy. The advisory committee also must include representation from State educational agencies (SEAs), LEAs, individuals with disabilities, parents, testing companies, and other relevant stakeholder groups. The Center must submit the names of proposed members of the advisory committee to OSEP for approval within eight weeks after receipt of the award.

(c) Form partnerships with other technical assistance and dissemination projects funded by the U.S. Department of Education (*e.g.,* the Comprehensive Centers, the Equity Assistance Centers, the Regional Educational Laboratories, the Regional Resource Centers, the Data Accountability Center, and the Early Childhood Outcomes Center), professional and advocacy organizations (*e.g.,* National Association of State Directors of Special Education, Learning Disabilities Association of America, Association of Test Publishers), and other entities (*e.g.,* research groups and academic institutions), to maximize efficiency and carry out leadership activities such as joint conferences, the coordination of TA services, and the planning and carrying out of TA meetings and activities, as appropriate.

(d) Support the RTTA and GSEG consortia by sharing products, guidance, analyses, tools, and research-based information related to students with disabilities (including information on the strength of available research evidence).

(e) Participate in, organize, or facilitate communities of practice that align with the needs of the project's target audience. Communities of practice should align with the project's objectives to support discussions and collaboration among key stakeholders. The following Web site provides more information on communities of practice: *http://tadnet.org/communities*.

(f) Prior to developing any new product, submit a proposal for the product to the TACC database for the OSEP Project Officer's approval. All new products should be developed consistent with the product definition and guidelines posted on the TACC Web site: *http://www.tadnet.org/home?format=html*.

(g) Contribute, on an ongoing basis, updated information on the Center's approved and finalized products and services to a database at TACC.

(h) Coordinate with the National Dissemination Center for Individuals with Disabilities to develop an efficient and high-quality dissemination strategy that reaches broad audiences. The Center must report to the OSEP Project Officer the outcomes of these coordination efforts.

(i) Maintain ongoing communication with the OSEP Project Officer through monthly phone conversations and e-mail communication.

Extending the Project for a Fourth and Fifth Year

The Secretary may extend the Center for up to two additional years beyond its original project period of 36 months if a grantee is achieving the intended outcomes of the grant, shows improvement against baseline measures on performance indicators, and is making a positive contribution to the inclusion of students with disabilities in State and local assessments and accountability systems.

References

Center for Education Policy. (2009). *Has Progress Been Made in Raising Achievement for Students with Disabilities?* Washington, DC: Center for Education Policy.

Eckes, S.E. & Swando, J. (2009). Special education subgroups under NCLB: Issues to consider. *Teachers College Record, 111,* 2479–2504.

National Council on Disability. (2008). *The No Child Left Behind Act and the Individuals with Disabilities Education Act: A Progress Report.* Washington, DC: National Council on Disability.

Towles-Reeves, E., Kleinert, H., & Muhomba, M. (2009). Alternate assessment: Have we learned anything new? *Exceptional Children,* 75, 233–252.

U.S. Department of Education. (2010). Overview Information; Race to the Top Fund Assessment Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2010. **Federal Register**, 75(68), April 9, 2010, 18171–18185.

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (APA) (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed priorities and requirements. Section 681(d) of IDEA, however, makes the public comment requirements of the APA inapplicable to the priority in this notice.

Program Authority: 20 U.S.C. 1463 and 1481.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99.

Note: The regulations in 34 CFR part 79 apply to all applicants except Federally recognized Indian Tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education (IHEs) only.

II. Award Information

Type of Award: Cooperative agreement.

Estimated Available Funds: $1,000,000 Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2012 from the list of unfunded applicants from this competition.

Maximum Awards: We will reject any application that proposes a budget exceeding $1,000,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months with an optional additional 24 months based on performance.

III. Eligibility Information

1. *Eligible Applicants:* SEAs; LEAs, including public charter schools that are considered LEAs under State law; IHEs; other public agencies; private nonprofit organizations; outlying areas; freely associated States; Indian Tribes or Tribal organizations; and for-profit organizations.

2. *Cost Sharing or Matching:* This competition does not require cost sharing or matching.

3. *Other: General Requirements*—(a) The projects funded under this competition must make positive efforts to employ and advance in employment qualified individuals with disabilities (see section 606 of IDEA).

(b) Applicants and grant recipients funded under this competition must involve individuals with disabilities or parents of individuals with disabilities ages birth through 26 in planning, implementing, and evaluating the projects (see section 682(a)(1)(A) of IDEA).

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet, from the Education Publications Center (ED Pubs), or from the program office.

To obtain a copy via the Internet, use the following address: *http://www.ed.gov/fund/grant/apply/grantapps/index.html.*

To obtain a copy from ED Pubs, write, fax, or call the following: ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–877–433–7827. Fax: (703) 605–6794. If you use a telecommunications device for the deaf (TDD), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *http://www.EDPubs.gov* or at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application package from ED Pubs, be sure to identify this program or competition as follows: CFDA number 84.326G.

To obtain a copy from the program office, contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the application narrative to the equivalent of no more than 70 pages, using the following standards:

- A "page" is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions. Text in charts, tables, figures, and graphs in the application narrative may be single spaced and will count toward the page limit.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- *Use one of the following fonts:* Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, the references, or the letters of support. However, the page limit does apply to all of the application narrative section (Part III).

We will reject your application if you exceed the page limit or if you apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

Applications Available: May 26, 2011.

Deadline for Transmittal of Applications: July 11, 2011.

Applications for grants under this competition may be submitted electronically using the *Grants.gov* Apply site, or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery, please refer to section IV. 7. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: September 8, 2011.

4. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and Central Contractor Registry:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the Central Contractor Registry (CCR), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active CCR registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one business day.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow 2–5 weeks for your TIN to become active.

The CCR registration process may take five or more business days to complete. If you are currently registered with the CCR, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

In addition, if you are submitting your application via Grants.gov, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see *http://www.grants.gov/section910/GrantsgovRegistrationBrochure.pdf*).

7. *Other Submission Requirements:* Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. Electronic Submission of Applications

We are participating as a partner in the Governmentwide Grants.gov Apply site. The National Assessment Center competition, CFDA number 84.326G, is included in this project. We request your participation in Grants.gov.

If you choose to submit your application electronically, you must use the Governmentwide Grants.gov Apply site at *http://www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

You may access the electronic grant application for the National Assessment Center competition at *http://www.Grants.gov.* You must search for the downloadable application package

for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search (*e.g.,* search for 84.326, not 84.326G).

Please note the following:

• Your participation in Grants.gov is voluntary.

• When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.

• Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.

• The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.

• You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page at *http://www.G5.gov.*

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.

• If you submit your application electronically, you must submit all documents electronically, including all information you typically provide on the following forms: The Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.

• If you submit your application electronically, you must upload any narrative sections and all other attachments to your application as files in a .PDF (Portable Document) format only. If you upload a file type other than a .PDF or submit a password-protected file, we will not review that material.

• Your electronic application must comply with any page-limit requirements described in this notice.

• After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

b. Submission of Paper Applications by Mail

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, *Attention:* (CFDA Number 84.326G), LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. Submission of Paper Applications by Hand Delivery

If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, *Attention:* (CFDA Number 84.326G), 550 12th

Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210 and are listed in the application package.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Additional Review and Selection Process Factors:*

In the past, the Department has had difficulty finding peer reviewers for certain competitions because so many individuals who are eligible to serve as peer reviewers have conflicts of interest. The Standing Panel requirements under IDEA also have placed additional constraints on the availability of reviewers. Therefore, the Department has determined that, for some discretionary grant competitions, applications may be separated into two or more groups and ranked and selected for funding within the specific groups. This procedure will make it easier for the Department to find peer reviewers by ensuring that greater numbers of individuals who are eligible to serve as reviewers for any particular group of applicants will not have conflicts of interest. It also will increase the quality, independence, and fairness of the review process, while permitting panel members to review applications under discretionary grant competitions for which they also have submitted applications. However, if the Department decides to select an equal number of applications in each group for funding, this may result in different cut-off points for fundable applications in each group.

4. *Special Conditions:* Under 34 CFR 74.14 and 80.12, the Secretary may impose special conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 34 CFR parts 74 or 80, as applicable; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* Under the Government Performance and Results Act of 1993 (GPRA), the Department has established a set of performance measures, including long-term measures, that are designed to yield information on various aspects of the effectiveness and quality of the Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities program. These measures focus on the extent to which projects provide high-quality products and services, the relevance of project products and services to educational and early intervention policy and practice, and the use of products and services to improve educational and early intervention policy and practice.

Grantees will be required to report information on their project's performance in annual reports to the Department (34 CFR 75.590).

5. *Continuation Awards:* In making a continuation award, the Secretary may consider, under 34 CFR 75.253, the extent to which a grantee has made "substantial progress toward meeting the objectives in its approved application." This consideration includes the review of a grantee's progress in meeting the targets and projected outcomes in its approved application, and whether the grantee has expended funds in a manner that is consistent with its approved application and budget. In making a continuation grant, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: David Egnor, U.S. Department of Education, 400 Maryland Avenue, SW., Room 4054, Potomac Center Plaza (PCP), Washington, DC 20202–2550. Telephone: (202) 245–7334.

If you use a TDD, call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

Electronic Access to This Document: 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.* At this site 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). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *http://www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: May 20, 2011.

Alexa Posny,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2011–13098 Filed 5–25–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Technology and Media Services for Individuals With Disabilities—Research and Development Center on the Use of Emerging Technologies To Improve Literacy Achievement for Students With Disabilities in Middle School

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice.

Overview Information

Notice inviting applications for new awards for fiscal year (FY) 2011.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.327M.

DATES:

Applications Available: May 26, 2011.

Deadline for Transmittal of Applications: July 25, 2011.

Deadline for Intergovernmental Review: September 23, 2011.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purposes of the Technology and Media Services for Individuals with Disabilities program are to: (1) Improve results for children with disabilities by promoting the development, demonstration, and use of technology; (2) support educational media services activities designed to be of educational value in the classroom setting to children with disabilities; and (3) provide support for captioning and video description that are appropriate for use in the classroom setting.

Priority: In accordance with 34 CFR 75.105(b)(2)(v), this priority is from allowable activities specified in the statute or otherwise authorized in the statute (see sections 674(c) and 681(d) of the Individuals with Disabilities Education Act (IDEA)).

Absolute Priority: For FY 2011 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

Technology and Media Services for Individuals With Disabilities—Research and Development Center on the Use of Emerging Technologies To Improve Literacy Achievement for Students With Disabilities in Middle School

Background

Middle school students with disabilities lag significantly behind students without disabilities in reading achievement. For example, the 2009 National Assessment of Educational Progress (NAEP) found that 8 percent of 8th grade students with disabilities scored proficient or above in reading compared to 35 percent of students without disabilities (U.S. Department of Education, 2010b).

For students with disabilities who are struggling readers, the general middle school curriculum offers fewer opportunities for developing basic literacy skills than the elementary school curriculum. For example, when a student enters middle school, there is a shift from developing basic reading skills to applying those skills to learn content in which general literacy skills are combined with "content-area literacy" skills, such as specialized vocabulary, basic concepts, and content-specific comprehension skills (Shanahan & Shanahan, 2008). Alleviating reading deficits at the middle school level requires integrating instruction to remediate basic skills with academic content instruction (Reed, 2009).

Technology can play a role in remediating academic deficits, and has the potential to improve the literacy achievement of students, including students with disabilities, at the middle school level (Moran *et al.,* 2008; Kim *et al.,* 2006). New technologies such as collaborative online environments, multiplayer and alternate reality games, electronic books, mobile broadband, augmented reality, learning analytics, and personalized Web-based environments offer new forms of powerful and engaging learning opportunities (Johnson, *et al.,* 2009; Johnson, *et al.,* 2010; Johnson, *et al.,* 2011).

The Department's Blueprint for Reform: The Reauthorization of the Elementary and Secondary Education Act emphasizes the importance of improving capacity at the State and district levels to support the effective use of technology to improve instruction (U.S. Department of Education, 2010a). In addition, the National Educational Technology Plan (NETP) (U.S. Department of Education, 2010c) emphasizes that technology is at the core of virtually all aspects of modern life, and that it should play an essential role in 21st century education and contribute to the "revolutionary transformation" that is needed to address critical educational challenges.

There is, however, a need for continued research, particularly as 21st century technologies advance and are integrated into instruction. Of particular importance is research on how the benefits of emerging technologies can be extended to areas of highest need such as persistently lowest-achieving schools. The Department has previously identified this further need for research in the Supplemental Priorities for Discretionary Grant Programs, issued in December 2010. Those supplemental priorities included Priority 14 "Building Evidence of Effectiveness" for projects that propose evaluation plans that are likely to produce valid and reliable evidence for, among other areas, "identifying and improving practices * * * that may contribute to improving outcomes;" and Priority 6 "Technology" for projects designed to "improve student achievement or teacher effectiveness through the use of high-quality digital tools or materials, which may include * * * developing, implementing, or evaluating digital

tools or materials" (U.S. Department of Education, 2010d). This priority is consistent with the Supplemental Priorities.

The purpose of this priority is to support research that investigates how emerging 21st century technologies can be used to improve literacy achievement for students with disabilities in middle school. Specifically, the Center funded under this priority will explore how technologies can be used to: (1) Accelerate remediation in basic reading skills in conjunction with content-area instruction; (2) enhance student motivation, engagement, and self-efficacy related to literacy learning; and (3) improve efficiency in the use of educational resources (*e.g.,* through the use of open educational resources, increasing academic learning time).

Priority:

The purpose of this priority is to fund a cooperative agreement to support the establishment and operation of a Research and Development Center on the Use of Emerging Technologies to Improve Literacy Achievement for Students with Disabilities in Middle School (Center). Under this priority, the Center will form a consortium with established technology developers and researchers to conduct a systematic program of research and development on the use of emerging 21st century technologies to improve literacy achievement for students with disabilities in middle schools, including middle schools that are persistently lowest-achieving schools.[1]

To be considered for funding under this absolute priority, applicants must meet the application requirements contained in this priority. The Center funded under this absolute priority also must meet the programmatic and administrative requirements specified in the priority.

Application Requirements. An applicant must include in its application—

(a) A theoretical and empirical justification for the technology or technologies to be developed and evaluated under the proposed Center. This may be a single emerging technology (*e.g.,* a game-based learning environment) or a combination of emerging technologies (*e.g.,* a collaborative learning environment incorporating multiplayer, game-based features and learning analytic tools). (For simplicity, the word "technology" will be used hereinafter to refer to the technology or combination of technologies to be developed and studied by the Center.) In essence, the theoretical and empirical justification must answer the following question: What is the evidence that the proposed technology has strong potential for substantially improving literacy outcomes for middle school students with disabilities? Applicants must—

(1) Describe the broader education context for the proposed technology by including data on, and reviewing research describing, the attributes of typical existing practices that the technology will enhance or replace; and

(2) Demonstrate an understanding of how the proposed technology would address the shortcomings of existing practices.

(b) A detailed description of the proposed technology for improving literacy achievement for students with disabilities in middle school and a theory of change for the proposed technology. Applicants must—

(1) Specify the key components of the proposed technology (*i.e.,* the active ingredients that are hypothesized to be critical to achieving the intended results) and describe how they relate to each other temporally (or operationally), pedagogically, and theoretically (*e.g.,* why A leads to B); and

(2) Provide a strong theoretical and empirical justification for the design and sequencing of the features or components of the technology.

For example, if the applicant proposes to develop and study a combination of technologies including a collaborative learning environment, game-based learning, and learning analytic tools, the applicant must describe the specific components of the technologies (*e.g.* the types of collaboration, the game experiences, the analytics to be performed, *etc.*) and how they might interrelate to produce outcomes of interest in this priority (*e.g.* accelerated remediation in basic reading skills and enhanced student motivation, engagement, and self-efficacy). Although the specific combination of technologies may be new, the applicant must provide theoretical and empirical support from existing literature (*e.g.* on technology-based games and motivation, collaborative learning, data-based decision making, *etc.*) to justify the design and features of the proposed technology. This example is illustrative only and not intended to constrain or guide the selection of technologies. We note that when applicants clearly describe the features of a proposed technology and the theory of change that guides the technology, reviewers are better able to evaluate whether the proposed technology has the potential to substantially improve student outcomes relative to current practice.

(c) A detailed research plan for developing the proposed technology and assessing the feasibility of implementing the proposed technology in middle schools including middle schools that are persistently lowest-achieving schools, and the promise of the proposed technology for improving student outcomes. The plan must—

(i) Describe a systematic, iterative development process to be used in the design and refinement of the proposed technology and plans for acquiring evidence about the operation of the intervention according to the theory of change for the proposed technology;

(ii) Define the samples and settings that will be used to develop the proposed technology, assess the feasibility of the proposed technology for use in middle schools by students with disabilities, and test the promise of the proposed technology for improving the literacy outcomes of students with disabilities. Evidence of the promise of the proposed technology may be obtained through a small quasi-experimental study incorporating a comparison group with pretest and posttest data, a small experimental study, or for low-incidence populations, a series of single-subject experimental design studies. Assessment of the feasibility of implementation and testing of the promise of the technology provides feedback to the Center on the usability of the technology in middle schools by students with disabilities and their teachers and initial information on the effectiveness of the technology for substantially improving student outcomes. These data may result in further modification and development of the technology; and

[1] For purposes of this priority, the term *persistently lowest-achieving school* means, consistent with section 1003(g) of the ESEA, School Improvement Grants (74 FR 65618), as determined by the State: (i) Any Title I school in improvement, corrective action, or restructuring that (a) Is among the lowest-achieving five percent of Title I schools in improvement, corrective action, or restructuring or the lowest-achieving five Title I schools in improvement, corrective action, or restructuring in the State, whichever number of schools is greater; or (b) Is a high school that has had a graduation rate as defined in 34 CFR 200.19(b) that is less than 60 percent over a number of years; and (ii) Any secondary school that is eligible for, but does not receive, Title I funds that (a) Is among the lowest-achieving five percent of secondary schools or the lowest-achieving five secondary schools in the State that are eligible for, but do not receive, Title I funds, whichever number of schools is greater; or (b) Is a high school that has had a graduation rate as defined in 34 CFR 200.19(b) that is less than 60 percent over a number of years. To determine whether a school is a lowest-achieving school for purposes of this definition, a State must take into account both (i) The academic achievement of the "all students" group in a school in terms of proficiency on the State's assessments under section 1111(b)(3) of the ESEA in reading/language arts and mathematics combined; and (ii) The school's lack of progress on those assessments over a number of years in the "all students" group (U.S. Department of Education, 2010b).

(iii) Explicitly, but not necessarily exclusively, address the needs of students with disabilities in middle schools that are persistently lowest-achieving schools, recognizing that these schools often face challenges in technology innovation and implementation. The Center may, for example, develop technology that can be adapted to a school's level of achievement and technology readiness, develop strategies for establishing affiliations with high-performing schools to support the use of emerging technology in low-performing schools, or simply set aside a portion of the Center's resources to develop technology specifically suited to middle schools that are persistently lowest-achieving schools.

(d) A detailed research plan for testing the efficacy of the proposed technology for improving literacy outcomes of students with disabilities. This plan must—

(i) Define the sample to be selected, a portion of which must be middle schools that are persistently lowest-achieving schools, and sampling procedures to be employed, including justification for exclusion and inclusion criteria;

(ii) Describe strategies to increase the likelihood that participants (including schools, teachers, and students) will remain in the study over the course of the evaluation (*i.e.,* reduce attrition);

(iii) Describe the design of the evaluation. Studies using random assignment to intervention and comparison conditions have the strongest internal validity for causal conclusions and, thus, are preferred whenever they are feasible. When a randomized trial is proposed, the applicant must clearly state and present a convincing rationale for the unit of randomization (*e.g.,* student, classroom, teacher, or school). Applicants must explain the procedures for assignment of groups (*e.g.,* schools) or participants to intervention and comparison conditions and how the integrity of the assignment process will be ensured.

Applicants may propose a quasi-experimental design (*e.g.,* a regression discontinuity design) rather than a randomized trial when randomization is not possible. Applicants must justify that the proposed design permits drawing causal conclusions about the effect of the intervention on the intended outcomes. Applicants must discuss how selection bias will be minimized or modeled. To this end, the specific assumptions made by the design should be well justified. Applicants must explicitly discuss the threats to internal validity that are not addressed convincingly by the design and how conclusions from the research will be tempered in light of these threats;

(iii) Address the statistical power of the evaluation design to detect a reasonably expected and minimally important effect. When justifying what constitutes a reasonably expected effect, applicants must indicate clearly (*e.g.,* by including the statistical formula) how the effect size was calculated;

(iv) Justify the appropriateness of the chosen measures. Applicants must provide information on the reliability and validity of the proposed measures, the procedures for and the timing of the data collection, and indicate procedures to guard against bias entering into the data collection process;

(v) Describe how the applicant will assess the fidelity of implementation of the proposed technology in middle schools and how fidelity data will be incorporated into analyses of the impact of the intervention;

(vi) Demonstrate consideration to the selection of the counterfactual. Comparisons of interventions against other conditions are only meaningful to the extent that one can tell what the comparison group receives or experiences (*e.g.,* regular instruction only, regular instruction including a different technology product); and

(vii) Describe data analysis procedures. For quantitative data, specific statistical procedures must be described. The relation between hypotheses, measures, and independent and dependent variables should be clear. For qualitative data, the specific methods used to index, summarize, and interpret data must be delineated.

(e) Evidence of commitment from established technology developers and researchers in areas relevant to the Center's mission who express their commitment to form a consortium to conduct collaborative research and development efforts. The members of the consortium must collectively demonstrate high levels of expertise in all of the following: development of the emerging technology described in paragraphs (a) and (b) of this priority, educational uses of advanced technology, addressing the problems of persistently lowest-achieving schools, field-based technology research and development, literacy pedagogy, and teaching students with disabilities at the middle school level.

(f) A plan for a formative evaluation of the proposed project's activities. The plan must describe how the formative evaluation will use clear performance objectives to ensure continuous improvement in the operation of the proposed project, including objective measures of progress in implementing the project and ensuring the quality of products and services;

(g) A budget for a summative evaluation to be conducted by an independent third party; and

(h) A budget for attendance at the following:

(1) A one and one half-day kick-off meeting to be held in Washington, DC, within four weeks after receipt of the award, and an annual planning meeting held in Washington, DC, with the Office of Special Education Programs (OSEP) Project Officer during each subsequent year of the project period.

(2) A three-day Project Directors' Conference in Washington, DC, during each year of the project period.

(3) Two additional two-day trips annually to attend Department briefings, Department-sponsored conferences, and other meetings, as requested by OSEP.

Project Activities. To meet the requirements of this priority, the Center, at a minimum, must—

(a) Establish and maintain a technical work group (TWG) to review the research plans and activities of the Center and to provide technical advice throughout the project period. At a minimum, the TWG must convene annually, whether in person, by phone, or through another means. The TWG must include experts in the research methodologies employed by the Center, the emerging technology under study, issues faced by persistently lowest-achieving middle schools, literacy instruction, and instruction for students with disabilities;

(b) Carry out the research plan developed under Application Requirements item (c) to develop the proposed technology, assess the feasibility of implementing the proposed technology in middle schools, and test the promise of the proposed technology for improving literacy outcomes of students with disabilities.

(c) Carry out the research plan developed under Application Requirements item (d) to evaluate the efficacy of the proposed technology to improve literacy outcomes of students with disabilities.

(d) Maintain a Web site that meets government or industry-recognized standards for accessibility;

(e) Disseminate information on the activities and findings of the Center regionally and nationally through the use of Web sites, listservs, publications, presentations, and communities of practice;

(f) Maintain ongoing communication with the OSEP Project Officer through

monthly phone conversations and e-mail communication; and

(g) Communicate and collaborate, on an ongoing basis, with Department-funded projects and other projects engaged in related activities. This collaboration may include the joint development of products, coordination of research, and planning and carrying out of meetings and events.

Extending the Project for a Fourth and Fifth Year

The Secretary may extend the Center for up to two additional years beyond its original project period of 36 months if the grantee is achieving the intended outcomes of the grant, and is making a positive contribution to developing and testing emerging technology to improve the academic achievement of middle school students with disabilities.

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Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (APA) (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed priorities and requirements. Section 681(d) of IDEA, however, makes the public comment requirements of the APA inapplicable to the priority in this notice.

Program Authority: 20 U.S.C. 1474 and 1481(d).

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99.

Note: The regulations in 34 CFR part 79 apply to all applicants except Federally recognized Indian Tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education (IHEs) only.

II. Award Information

Type of Award: Cooperative agreement.

Estimated Available Funds: $1,996,000.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2012 from the list of unfunded applicants from the competition.

Maximum Award: We will reject any application that proposes a budget exceeding $1,996,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months with an optional additional 24 months based on performance.

III. Eligibility Information

1. *Eligible Applicants:* State educational agencies (SEAs); local educational agencies (LEAs), including public charter schools that are considered LEAs under State law; IHEs; other public agencies; private nonprofit organizations; and for-profit organizations.

Note: Because of the challenging nature of the project, the Secretary encourages eligible entities with the ability and capacity to conduct scientifically valid research to form consortia with any other eligible parties (including researchers, developers, *etc.*) that meet the requirements in 34 CFR 75.127 through 75.129 to apply under the priority in this notice. A consortium is any combination of eligible entities. The Secretary views the formation of consortia as an effective and efficient strategy to address the requirements of the priority in this notice.

2. *Cost Sharing or Matching:* This competition does not require cost sharing or matching.

3. *Other: General Requirements*—(a) The Center funded under this competition must make positive efforts to employ and advance in employment qualified individuals with disabilities (see section 606 of IDEA).

(b) Applicants and the grant recipient funded under this competition must involve individuals with disabilities or parents of individuals with disabilities ages birth through 26 in planning, implementing, and evaluating the projects (see section 682(a)(1)(A) of IDEA).

IV. Application and Submission Information

1. *Address to Request Application Package:* Education Publications Center (ED Pubs), U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–877–433–7827. Fax: (703) 605–6794. If you use a telecommunications device for the deaf (TDD), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *http://www.EDPubs.gov* or at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application package from ED Pubs, be sure to identify this competition as follows: CFDA number 84.327M.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in

the application package for this competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part III to the equivalent of no more than 50 pages, using the following standards:

- A "page" is 8.5″ × 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- *Use one of the following fonts:* Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, the references, or the letters of support. However, the page limit does apply to all of the application narrative section (Part III).

We will reject your application if you exceed the page limit; or if you apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

Applications Available: May 26, 2011.

Deadline for Transmittal of Applications: July 25, 2011.

Applications for grants under this competition may be submitted electronically using the Grants.gov Apply site (Grants.gov), or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery, please refer to section IV. 7. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: September 23, 2011.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and Central Contractor Registry:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the Central Contractor Registry (CCR), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active CCR registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one business day.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow 2–5 weeks for your TIN to become active.

The CCR registration process may take five or more business days to complete. If you are currently registered with the CCR, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

In addition, if you are submitting your application via Grants.gov, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined in the Grants.gov 3–Step Registration Guide (see *http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf*).

7. *Other Submission Requirements:* Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. Electronic Submission of Applications.

We are participating as a partner in the Governmentwide Grants.gov Apply site. The Research and Development Center on the use of Emerging Technologies to Improve Academic Achievement for Students with Disabilities in Middle School competition, CFDA number 84.327M, is included in this project. We request your participation in Grants.gov.

If you choose to submit your application electronically, you must use the Governmentwide Grants.gov Apply site at *http://www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

You may access the electronic grant application for the Research and Development Center on the use of Emerging Technologies to Improve Academic Achievement for Students with Disabilities in Middle School competition, CFDA number 84.327M at *http://www.Grants.gov.* You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search (*e.g.,* search for 84.327, not 84.327M).

Please note the following:

- Your participation in Grants.gov is voluntary.
- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your

application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.

• The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.

• You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page at *http://www.G5.gov.*

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.

• If you submit your application electronically, you must submit all documents electronically, including all information you typically provide on the following forms: the Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.

• If you submit your application electronically, you must attach any narrative sections of your application as files in a .PDF (Portable Document) format only. If you upload a file type other than a .PDF or submit a password-protected file, we will not review that material.

• Your electronic application must comply with any page-limit requirements described in this notice.

• After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

b. Submission of Paper Applications by Mail

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, *Attention:* (CFDA Number 84.327M), LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. Submission of Paper Applications by Hand Delivery

If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, *Attention:* (CFDA Number 84.327M), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are from 34 CFR 75.210 and are listed in the application package.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Additional Review and Selection Process Factors:* In the past, the Department has had difficulty finding peer reviewers for certain competitions because so many individuals who are eligible to serve as peer reviewers have conflicts of interest. The Standing Panel requirements under IDEA also have placed additional constraints on the availability of reviewers. Therefore, the Department has determined that, for some discretionary grant competitions, applications may be separated into two or more groups and ranked and selected for funding within specific groups. This procedure will make it easier for the Department to find peer reviewers, by ensuring that greater numbers of individuals who are eligible to serve as reviewers for any particular group of applicants will not have conflicts of interest. It also will increase the quality, independence, and fairness of the review process, while permitting panel members to review applications under discretionary grant competitions for which they also have submitted applications. However, if the Department decides to select an equal number of applications in each group for funding, this may result in different cut-off points for fundable applications in each group.

4. *Special Conditions:* Under 34 CFR 74.14 and 80.12, the Secretary may impose special conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 34 CFR parts 74 or 80, as applicable; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* Under the Government Performance and Results Act of 1993 (GPRA), the Department has established a set of performance measures, including long-term measures, that are designed to yield information on various aspects of the effectiveness and quality of the Technology and Media Services for Individuals with Disabilities program. These measures focus on the extent to which projects are of high quality, are relevant to improving outcomes of children with disabilities, and contribute to improving outcomes for children with disabilities. We will collect data on these measures from the project funded under this competition.

The grantee will be required to report information on its project's performance in annual performance reports to the Department (34 CFR 75.590).

5. *Continuation Awards:* In making a continuation award, the Secretary may consider, under 34 CFR 75.253, the extent to which a grantee has made "substantial progress toward meeting the objectives in its approved application." This consideration includes the review of a grantee's progress in meeting the targets and projected outcomes in its approved application, and whether the grantee has expended funds in a manner that is consistent with its approved application and budget. In making a continuation grant, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: David Malouf, U.S. Department of Education, 400 Maryland Avenue, SW., Room 4114, Potomac Center Plaza (PCP), Washington, DC 20202–2550. *Telephone:* (202) 245–6253.

If you use a TDD, call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

Electronic Access to This Document: 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.* At this site 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). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *http://*

www.federalregister.gov. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: May 20, 2011.

Alexa Posny,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2011–13107 Filed 5–25–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Energy Employees Occupational Illness Compensation Program Act of 2000; Revision to the List of Covered Facilities

AGENCY: Department of Energy.

ACTION: Notice of revision of listing of covered facilities.

SUMMARY: The Department of Energy ("Department" or "DOE") periodically publishes or revises a list of facilities covered under the Energy Employees Occupational Illness Compensation Program Act of 2000, as amended ("EEOICPA" or "Act"). This notice amends the previous lists that DOE published by removing the designation of the Mathieson Chemical Company facility in Pasadena, Texas, as an atomic weapons employer (AWE) facility. Previous lists or revisions were published by DOE on June 30, 2010, as amended by August 3, 2010, April 9, 2009, June 28, 2007, November 30, 2005, August 23, 2004, July 21, 2003, December 27, 2002, June 11, 2001, and January 17, 2001.

FOR FURTHER INFORMATION CONTACT: Patricia R. Worthington, Ph.D., Director, Office of Health and Safety (HS–10), (301) 903–5926.

ADDRESSES: The Department welcomes comments on this notice. Comments should be *addressed to:* Patricia R. Worthington, Ph.D., Director, Office of Health and Safety (HS–10), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

SUPPLEMENTARY INFORMATION:

Purpose

EEOICPA establishes a program to provide compensation to certain employees who develop illnesses as a result of their employment with AWEs, DOE and its predecessor Agencies, certain of its contractors and subcontractors, and listed beryllium vendors. Section 3621(4) of the Act (codified at 42 U.S.C. 7384l(4)) defines an AWE as "an entity, other than the United States, that—(A) Processed or produced, for use by the United States, material that emitted radiation and was used in the production of an atomic weapon, excluding uranium mining and milling; and (B) is designated by the Secretary of Energy as an [AWE] for purposes of the compensation program." Section 3621(5) defines an AWE facility as "a facility, owned by an [AWE], that is or was used to process or produce, for use by the United States, material that emitted radiation and was used in the production of an atomic weapon, excluding uranium mining or milling."

It has recently come to the attention of the Department that the Mathieson Chemical Company (also known as Pasadena Chemical Corporation, Olin Mathieson Chemical Company, and Mobil Mining and Minerals Company) facility in Pasadena, Texas, should not have been designated as an AWE facility because no material that emitted radiation, which was processed or produced by the Mathieson Chemical Company, was used in the production on an atomic weapon.

This notice formally makes the change to the listing of covered facilities by removing the Mathieson Chemical Company facility in Pasadena, Texas, as an AWE facility under EEOICPA.

Issued in Washington, DC on May 17, 2011.

Glenn S. Podonsky,

Chief Health, Safety and Security Officer, Office of Health, Safety and Security.

[FR Doc. 2011–13055 Filed 5–25–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board Chairs

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB) Chairs. 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, June 15, 2011, 8 a.m.–5 p.m. and Thursday, June 16, 2011, 8 a.m.–12:30 p.m.

ADDRESSES: Aliante Station Hotel, 7300 Aliante Parkway, North Las Vegas, Nevada 89084.

FOR FURTHER INFORMATION CONTACT: Catherine Alexander Brennan, Designated Federal Officer, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; Phone: (202) 586–7711.

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.

Tentative Agenda Topics

Wednesday, June 15, 2011

- EM Program Update,
- EM SSAB Chairs' Round Robin: Top Three Site-Specific Topics and Achievements,
- EM Headquarters Budget Update,
- EM Headquarters Waste Disposition Update,
- EM SSAB Chairs' Roundtable Discussion: Day One Presentations and Product Development.

Thursday, June 16, 2011

- EM Headquarters Groundwater Update,
- EM SSAB Chairs' Roundtable Discussion: Day Two Presentations and Product Development.

Public Participation: The EM SSAB Chairs welcome the attendance of the public at their advisory committee meetings 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 Catherine Alexander Brennan at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed either before or after the meeting with the Designated Federal Officer, Catherine Alexander Brennan, at the address or telephone listed above. Individuals who wish to make oral statements pertaining to agenda items should also contact Catherine Alexander Brennan. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The 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 comment will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Catherine Alexander Brennan at the address or phone number listed above. Minutes will also be available at the following Web site: *http://www.em.doe.gov/stakepages/ssabchairs.aspx.*

Issued at Washington, DC on May 20, 2011.

LaTanya R. Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2011–13063 Filed 5–25–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Reimbursement for Costs of Remedial Action at Active Uranium and Thorium Processing Sites

AGENCY: Department of Energy.

ACTION: Revised notice of the acceptance of Title X claims during fiscal year (FY) 2011.

SUMMARY: This Notice announces revisions to the Department of Energy (DOE) acceptance of claims in FY 2011 from eligible active uranium and thorium processing site licensees for reimbursement under Title X of the Energy Policy Act of 1992. In our **Federal Register** Notice of November 24, 2010 (75 FR 71677), the Department announced the closing date for the submission of claims in FY 2011 as April 29, 2011. In a subsequent **Federal Register** Notice of May 3, 2011, (76 FR 24871), the Department announced it had become necessary to defer that closing date for acceptance of claims; and at a later date, the Department would announce a new closing date for the submission of FY 2011 claims and a new address for submitting the claims.

DATES: The revised closing date for the submission of claims in FY 2011 is June 3, 2011. These new claims will be processed for payment by June 1, 2012, together with any eligible unpaid approved claim balances from prior years. All reimbursements are subject to the availability of funds from congressional appropriations.

ADDRESSES: Claims should be forwarded by certified or registered mail, return receipt requested, to U.S. Department of Energy, Office of Legacy Management, Attn: Title X Coordinator, 2597 Legacy Way, Grand Junction, Colorado 81503. Two copies of the claim should be included with each submission.

FOR FURTHER INFORMATION CONTACT: Contact David Mathes at (301) 903–7222 of the U.S. Department of Energy, Office of Environmental Management, Office of Disposal Operations.

SUPPLEMENTARY INFORMATION: DOE published a final rule under 10 CFR part 765 in the Federal Register on May 23, 1994 (59 FR 26714), to carry out the requirements of Title X of the Energy Policy Act of 1992 (sections 1001–1004 of Pub. L. 102–486, 42 U.S.C. 2296a *et seq.*) and to establish the procedures for eligible licensees to submit claims for reimbursement. DOE amended the final rule on June 3, 2003 (68 FR 32955), to adopt several technical and administrative amendments (*e.g.,* statutory increases in the reimbursement ceilings). Title X requires DOE to reimburse eligible uranium and thorium licensees for certain costs of decontamination, decommissioning, reclamation, and other remedial action incurred by licensees at active uranium and thorium processing sites to remediate byproduct material generated as an incident of sales to the United States Government. To be reimbursable, costs of remedial action must be for work which is necessary to comply with applicable requirements of the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. 7901 *et seq.*) or, where appropriate, with requirements established by a State pursuant to a discontinuance agreement under section 274 of the Atomic Energy Act of 1954 (42 U.S.C. 2021). Claims for reimbursement must be supported by reasonable documentation as determined by DOE in accordance with 10 CFR Part 765. Funds for reimbursement will be provided from the Uranium Enrichment Decontamination and Decommissioning Fund established at the Department of Treasury pursuant to section 1801 of the Atomic Energy Act of 1954 (42 U.S.C. 2297g). Payment or obligation of funds shall be subject to the requirements of the Anti-Deficiency Act (31 U.S.C. 1341).

Authority: Section 1001–1004 of Public Law 102–486, 106 Stat. 2776 (42 U.S.C. 2296a *et seq.*).

Issued in Washington, DC, on this 19th of May 2011.

David E. Mathes,

Office of Disposal Operations, Office of Technical and Regulatory Support.

[FR Doc. 2011–13064 Filed 5–25–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Docket Number EERE–2011–BT–NOA–0039]

Technology Evaluation Process

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of request for information (RFI).

SUMMARY: The U.S. Department of Energy (DOE) seeks comments and information related to a commercial buildings technology evaluation process. DOE is seeking to create a process for evaluating emerging and underutilized energy efficient technologies for commercial buildings based on the voluntary submittal of product test data. The program would be centered on a publicly accessible listing of products that meet minimum energy efficiency criteria specified for the applicable technology type. Evaluation under the criteria would be based on product test data submitted by manufacturers, then analyzed by DOE to generate information related to the energy savings of the products. For those products that met the specified minimum energy efficiency criteria, the results of such analyses would be made publicly available. The program would provide centralized information on the analysis factors in a manner that would make results directly comparable between products within the same technology type or area.

DATES: Written comments and information are requested on or before June 27, 2011.

ADDRESSES: Interested persons may submit comments, identified by docket number EERE–2011–BT–NOA–0039, by any of the following methods. Your response should be limited to 3 pages. Questions relative to responding to this RFI may be sent to the same mailbox in advance of your response, and will be answered via e-mail.

- *E-mail:* to *TechID-RFI-2011-NOA-0039@ee.doe.gov.* Include EERE–2011–BT–NOA–0039 in the subject line of the message.
- *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, Revisions to Energy Efficiency Enforcement Regulations, EERE–2011–BT–NOA–0039, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Phone: (202) 586–2945. Please submit one signed paper original.
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 6th Floor, 950 L'Enfant Plaza, SW., Washington, DC 20024. Phone: (202) 586–2945. Please submit one signed paper original.

Instructions: All submissions received must include the agency name and docket number.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information may be sent to Mr. Alan Schroeder, U.S. Department of Energy, Office of Energy Efficiency and

Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: 202–586–0158. E-mail: *Alan.Schroeder@ee.doe.gov.*

SUPPLEMENTARY INFORMATION:

Program Overview

The U.S. Department of Energy (DOE) is seeking to create a process for evaluating emerging and underutilized energy efficient technologies for commercial buildings based on the voluntary submittal of product test data. The program would be centered on a publicly accessible listing of products that meet minimum energy efficiency criteria specified for the applicable technology type. Evaluation under the criteria would be based on product test data submitted by manufacturers, then analyzed by DOE to generate information related to the energy savings of the products. For those products that met the specified minimum energy efficiency criteria, the results of such analyses would be made publicly available. The program would provide centralized information on the analysis factors in a manner that would make results directly comparable between products within the same technology type or area.

DOE recognizes that building owners and operators, utilities, states, and local governments, among others, could greatly benefit from a central listing of product test data and a standard process for evaluating potential commercial building technologies, thus potentially preventing the duplication of product evaluation efforts. The goal of creating this standard process is to evaluate energy-saving technologies in a common manner utilizing product test data. The process is intended to help accelerate the adoption of energy-saving commercial building equipment by providing information to owners, operators, utilities, states, and local governments to facilitate decisions regarding the purchase/implementation of the technologies. To facilitate awareness of the new process, and to allow interested parties to provide suggestions, comments, and information, DOE is publishing this Request for Information (RFI).

DOE envisions the new technology evaluation process will be based on several central elements. As proposed, the evaluations would be based on qualified third-party laboratory test data using only qualified procedures. Manufacturers, and possibly utilities, suppliers, and energy programs would submit third-party test data to the program through a Web site portal. Technology areas of interest would be identified by DOE and test data submissions would need to fall within these areas of interest. The up-to-date technology areas of interest would be identified on the test data submission Web site.

As currently being considered, the test data would be reviewed to ensure it comports with program specifications and subsequently evaluated using standard methodologies. The evaluations would use the test data as input for DOE models to perform analyses such as energy savings analyses, life-cycle cost analyses, and payback analyses for the technology being evaluated. Results of the technology evaluations would be publicly available for those products that met specified minimum criteria. Test data submitters would have an opportunity to comment on the results of the evaluations of their test data prior to a determination of whether the evaluations were posted.

Detailed Description

The following describes the considered framework through which DOE intends to develop a new voluntary commercial building technology evaluation process. Participation in this program would be strictly voluntary; however, evaluations conducted through this program would be available to the public.

The screening would consist of a three-step review followed by specified energy- and cost-related analyses. The first review would be to ensure that the product is of a type identified by DOE as a technology of interest. The second review would be of the data source. DOE is considering specifying that data be generated by an industry-accredited test laboratory. The third review would ensure that the data was generated according to a recognized test procedure. If a submission does meet all three criteria in the reviews, DOE would perform the following analyses: Annual operating expense, energy savings, life-cycle cost, and payback analysis. DOE is also interested in recommendations of additional analyses that would assist building owners and managers in making investment decisions. DOE has not yet identified what results would be necessary under each analysis in order for a product to be publicly listed under the program, and is accepting comment on this issue. For submitted test data that does not meet the review criteria, DOE would still accept the test data, but is unlikely to conduct any analyses.

The first review would be to ensure that the test data is for a product within the current technology scope of this new process, as identified by DOE. The current technology areas of interest would be listed on the test data submission Web site. This list of areas of interest would be updated approximately every six months.

The second review would be to ensure that submitted test data originated from an accredited laboratory. As stated above, DOE intends to have the process rely on third-party test data from sources recognized under an industry accreditation program. Generally, third-party test data can support accurate and reliable evaluations of technologies related to the energy savings potential of implementing, or switching to, certain commercial building technologies. To qualify as an accredited third party laboratory, the laboratory that generates the test data would need to be accredited to ISO 17025 General Requirements for the Competence of Testing and Calibration Laboratories, or an equivalent standard as determined by DOE in its evaluation methodology.

The third review of the test data would be to ensure that the test data was collected according to a qualified test plan. To be considered a qualified test plan, the test procedure run by the third party laboratory would need to be one of the following:

(a) A Federal test procedure established in regulation (*e.g.,* a DOE appliance efficiency test procedure).

(b) A test procedure relied upon by a Federal program (*e.g.,* an ENERGY STAR-qualified test procedure).

(c) A test procedure established under an industry consensus process.

DOE anticipates that a Web site would serve as both a portal for submitting test data and accessing the product evaluation listings by technology area. The Web site would contain a test data submission form to provide DOE with a technology description and features, qualifying test data, cost information, manufacturer-estimated energy savings achievable, and the intended scope of applicability for the product, all of which would be used to evaluate or characterize the technology or product.

DOE's primary interest in structuring the technology evaluations is to provide objective product energy savings information that commercial building owners and operators would need to determine whether to make a capital investment in a particular technology. Products that did not meet the specified level of energy efficiency would not be listed. The technology evaluations would be model-based and are not expected to involve any field testing. The submitted product test data and

cost data would serve as the basis for DOE's various analyses. These analyses would utilize models that would be standard for similar products and technology areas (*e.g.* all condensing water heater test data will be input into the same models and will undergo the same analyses as other water heating technologies). This would make analysis results comparable within similar technology groups. Each of the analyses that would be performed as part of the evaluation is described below. The methodologies for performing the analyses would vary by product type, but would be the same within product groups so that results are directly comparable. Submitters would provide the expected use-case conditions for the product, thus identifying the conditions under which it would be evaluated. The use-case conditions would be included in the final evaluation report.

Annual Operating Expense: The annual operating expense calculation would estimate the total cost of operating, repairing, and maintaining the technology over the course of a year. The annual operating expense would take into account the energy consumption of the product and energy price models to calculate an annual energy expense for specific regions of the country. The annual energy expense would be combined with estimated repair and maintenance costs for the product to calculate the annual operating expense for the submitted product test data.

Energy Savings Analysis: The energy savings analysis would calculate the total energy savings from an overnight switch to the new technology. The energy savings would be calculated as the difference between the annual unit energy consumption of a baseline technology and the annual unit energy consumption of the submitted product. The annual unit energy consumption of the new product would come from the test data. The baseline technology annual unit energy consumption would be determined by evaluating the distribution of product efficiencies currently in the marketplace.

DOE is suggesting that cost data for a product, specifically total installed cost data, be submitted along with the product test data. Then, more extensive and detailed analyses may be performed, such as a Life-Cycle Cost Analysis and a Payback Period Analysis.

Life-Cycle Cost Analysis: The life-cycle cost is the total consumer expense over the life of a product, including purchase expenses and operating costs (including energy expenditures). Future operating costs are discounted to the time of purchase and then are summed over the anticipated lifetime of the product.

The life-cycle cost is equal to the total installed cost plus the summation over the lifetime of the product of the operating costs discounted back to present day. The parameters to be defined for a life-cycle cost analysis are therefore:

(A) The total installed cost, in dollars.

(B) The lifetime of the technology, in years.

(C) The operating cost, in dollars.

(D) The discount rate.

(E) The year for which operating cost is to be determined.

The total installed cost would be submitted by the manufacturer along with the product test data. The primary inputs for establishing the operating cost are:

(C.1) Equipment energy consumption.

(C.2) Equipment efficiency.

(C.3) Energy prices.

(C.4) Energy price trends.

(C.5) Repair and maintenance costs.

(C.6) Lifetime.

(C.7) Discount rate.

DOE would utilize standard models and values for Energy Prices and Energy Price Trends based on compiled databases. Discount rate would be assumed by DOE. Repair and Maintenance Costs and Product Lifetime for all products of the same technology type would also be assumed if additional third-party test data is not provided to support manufacturer-suggested values for these fields. Remaining are Equipment Energy Consumption and Equipment Efficiency to be determined in order to calculate the operating cost. Energy Consumption and Energy Prices would be used to calculate the Annual Energy Expense. The Annual Energy Expense and Repair and Maintenance Cost would be used to calculate the Annual Operating Expense. The Annual Operating Expense combined with the assumed Lifetime, Discount Rate, and Energy Price Trends would be used to calculate the Lifetime Operating Expense. Finally, the Lifetime Operating Expense combined with the Total Installed Cost would be used to calculate the Life-Cycle Cost of the product.

As stated, Equipment Energy Consumption and Equipment Efficiency would come from the product test data submitted to the program by manufacturers. Energy consumption and efficiency data would be extracted from the submitted test data and will be fed into the standard DOE models, combined with standard assumed parameters, and the output would be Life-Cycle Cost and Payback Period (described below).

Payback Analysis: The payback period is the change in purchase expense of the new product (from a less efficient design to a more efficient design) divided by the change in annual operating expense that results from switching to the new product. It represents the number of years it will take the user to recover the assumed increased purchase expense of more energy-efficient equipment through decreased operating expenses. This calculation is known as a "simple" payback period because it does not take into account changes in operating expense over time or the time value of money (*i.e.,* uses an effective discount rate of zero percent).

The data inputs to this analysis would be the total installed cost of the equipment to the consumer and the annual (first year) operating expenditures. From the Life-Cycle Cost Analysis, the same methodology would be used and the Total Installed Cost, provided by the submitter or assumed in the analysis, would be combined with the Annual Operating Expense to calculate the Payback Period for the product. A payback period analysis compares the savings from switching to a more efficient product with the cost of a less efficient product, or baseline. For these analyses, the baseline would be determined by evaluating the distribution of product efficiencies currently in the marketplace. The resulting estimates would be used as the base case for the analysis.

As noted above, DOE is interested in receiving comments on the analyses proposed as part of the evaluation process. In addition, DOE is interested in what subsequent analyses or data would be most useful in assisting investment decisions. Evaluation results would first be sent to the manufacturer for comment following completion and prior to a decision of whether to list the product. The manufacturer would have a period of three weeks to return comments on the results of the evaluation. The comment period is intended to provide the manufacturer with a fair opportunity to justify or comment on whatever the evaluation results might reflect. DOE would develop a mechanism for creating awareness of completed and posted evaluation reports to ensure that the technology evaluations facilitate market adoption. Only products that meet a minimum energy efficiency improvement threshold would be posted to the program Web site. DOE seeks comments on what these threshold levels should be for different products.

Issues on Which DOE Seeks Commentand Information

DOE invites comments from respondents on all the specific elements discussed above, as well as any additional issues the respondent deems important. Specifically, DOE is requesting comment as to what level of analysis results should be necessary for a product to be listed. DOE is also requesting comment on the appropriateness of the analyses as described.

DOE is also interested in information from organizations currently conducting technology evaluations or housing product test data to create a listing for commercial building technologies based on the evaluation of test data. DOE seeks input from stakeholders conducting similar technology evaluation programs. Those stakeholders should respond to the following queries:

(1) How could DOE compliment existing efforts?

(2) Comments on the potential to use the proposed DOE evaluation process.

(3) Examples of your current technology evaluation program. The summary should include, at a minimum, the purpose of the program, the procedure and test plan followed for evaluations, and the reporting format of results. A sample evaluation may be included as an additional attachment.

(4) Example test data used either in other evaluation programs (see query 3 above) or as potential input into the process.

(5) Comments on the DOE-proposed review criteria.

(6) What commercial building technologies have been evaluated, or are planned for future evaluation, in your program?

(7) What organizations, if any, are qualified to accredit test facilities for this type of program?

DOE is also requesting notice of the availability of, and willingness to share, test data (that meets the established criteria) within the technology scope of the new Technology EvaluationProcess, as outlined in this RFI. DOE also requests that, once functional, manufacturers, utilities, research organizations, state and municipal energy programs, and other stakeholders submit test data through the program Web site via the nomination form.

Disclaimer and Important Notes

This is an RFI issued solely for information and program planning purposes; this RFI does not constitute a formal solicitation for proposals or abstracts. Your response to this notice will be treated as information only. DOE will not provide reimbursement for costs incurred in responding to this RFI. Respondents are advised that DOE is under no obligation to acknowledge receipt of the information received or provide feedback to respondents with respect to any information submitted under this RFI. Responses to this RFI do not bind DOE to any further actions related to this topic.

Confidential Business Information

According to 10 CFR 1004.11, any person submitting information he or she believes to be confidential and exempt by law from public disclosure should submit via e-mail, postal mail, or hand delivery/courier 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).

Issued in Washington, DC on May 18, 2011.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Office of Technology Development, Energy Efficiency and Renewable Energy.

[FR Doc. 2011–13096 Filed 5–25–11; 8:45 am]

BILLING CODE 6450–01–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: EC11–80–000.

Applicants: Evergreen Wind Power, LLC, Canandaigua Power Partners, LLC, Evergreen Wind Power V, LLC, Canandaigua Power Partners II, LLC, Stetson Wind II, LLC, Evergreen Gen Lead, LLC, Vermont Wind, LLC, Niagara Wind Power, LLC, Evergreen Wind Power III, LLC, Northeast Wind Holdings, LLC.

Description: Application for Approval under FPA Section 203 of Niagara Wind Power, LLC, *et al.*

Filed Date: 05/18/2011.

Accession Number: 20110518–5204.

Comment Date: 5 p.m. Eastern Time on Wednesday, June 8, 2011.

Docket Numbers: EC11–81–000.

Applicants: Dayton Power and Light Company, The AES Corporation, DPL Inc., DPL Energy, LLC.

Description: Application for Authorization of Disposition of Jurisdictional Assets and Merger of The AES Corporation and DPL Inc.

Filed Date: 05/19/2011.

Accession Number: 20110519–5027.

Comment Date: 5 p.m. Eastern Time on Thursday, June 9, 2011.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–787–007, EL10–50–005, EL10–57–005.

Applicants: ISO New England Inc., New England Power Pool Participants Committee.

Description: ISO–NE Compliance Filing in Response to FERC Order issued on April 13, 2011.

Filed Date: 05/13/2011.

Accession Number: 20110513–5170.

Comment Date: 5 p.m. Eastern Time on Friday, June 3, 2011.

Docket Numbers: ER10–3323–004.

Applicants: Indeck-Olean Limited Partnership.

Description: Indeck-Olean Limited Partnership submits tariff filing per 35: Indeck-Olean Compliance File Baseline FERC Electric MBR Tariff No. 1 to be effective 5/18/2011.

Filed Date: 05/18/2011.

Accession Number: 20110518–5137.

Comment Date: 5 p.m. Eastern Time on Wednesday, June 8, 2011.

Docket Numbers: ER11–2908–001.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35: 05–18–11 Supplemental Reserves Compliance Filing to be effective 4/19/2011.

Filed Date: 05/18/2011.

Accession Number: 20110518–5131.

Comment Date: 5 p.m. Eastern Time on Wednesday, June 8, 2011.

Docket Numbers: ER11–3585–000.

Applicants: Duke Energy Carolinas, LLC.

Description: Informational Update of Duke Energy Carolinas, LLC.

Filed Date: 05/16/2011.

Accession Number: 20110516–5153.

Comment Date: 5 p.m. Eastern Time on Monday, June 6, 2011.

Docket Numbers: ER11–3594–000.

Applicants: City of Anaheim, California.

Description: City of Anaheim, California submits tariff filing per 35.13(a)(1): City of Anaheim, CA TO Tariff and TRR Revisions to be effective 7/1/2011.

Filed Date: 05/18/2011.

Accession Number: 20110518–5136.

Comment Date: 5 p.m. Eastern Time on Wednesday, June 8, 2011.

Docket Numbers: ER11–3595–000.

Applicants: New York Independent System Operator, Inc.

Description: New York Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: NYISO Filing of Amendments to ISO Agreement and Code of Conduct to be effective 7/18/2011.

Filed Date: 05/18/2011.

Accession Number: 20110518–5148.

Comment Date: 5 p.m. Eastern Time on Wednesday, June 08, 2011.

Docket Numbers: ER11–3596–000.

Applicants: AEP Texas North Company.

Description: AEP Texas North Company submits tariff filing per 35.1: 20110518 TNC RS and SA Baseline to be effective 5/19/2011.

Filed Date: 05/18/2011.

Accession Number: 20110518–5162.

Comment Date: 5 p.m. Eastern Time on Wednesday, June 08, 2011.

Docket Numbers: ER11–3597–000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii: Revisions to Section 3.2.3(e) of PJM's Tariff Att. K Appx and OA Schedule 1 to be effective 9/17/2010.

Filed Date: 05/18/2011.

Accession Number: 20110518–5172.

Comment Date: 5 p.m. Eastern Time on Wednesday, June 08, 2011.

Docket Numbers: ER11–3598–000.

Applicants: Southwestern Public Service Company.

Description: Southwestern Public Service Company submits tariff filing per 35.13(a)(2)(iii: 5–19–11_RS137 SPS–WTMPA to be effective 7/16/2010 under ER11–3598 Filing Type: 10.

Filed Date: 05/19/2011.

Accession Number: 20110519–5016.

Comment Date: 5 p.m. Eastern Time on Thursday, June 09, 2011.

Docket Numbers: ER11–3599–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc.'s Notice of Cancellation of Meter Agent Services Agreement.

Filed Date: 05/19/2011.

Accession Number: 20110519–5025.

Comment Date: 5 p.m. Eastern Time on Thursday, June 09, 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 docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 19, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–13025 Filed 5–25–11; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OEI–2010–0835; FRL–9311–6]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Proposed Collections; Toxic Chemical Release Reporting; Request for Comments on Proposed Renewal of Form R and Form A, Including Minor Form Revisions and the Ratio-Based Burden Methodology

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to make changes to and renew an existing approved collection. The ICR Supporting Statement, which is abstracted below, describes the nature of

the information collection (including proposed minor form revisions) and its estimated burden and cost.

DATES: Additional comments may be submitted on or before June 27, 2011.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OEI–2010–0835, to (1) EPA online using *http://www.regulations.gov* (our preferred method), by e-mail to *oei.docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Cassandra Vail, Toxics Release Inventory Program Division, Office of Information Analysis and Access (2844T), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–566–0753; e-mail address: *vail.cassandra@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On February 11, 2011 (76 FR 7841), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received two comments, which are addressed in the Response to Comments document. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OEI–2010–0835, which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the OEI Docket, EPA Docket Center (EPA/DC), U.S. EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the OEI Docket is 202–566–1752.

Use EPA's electronic docket and comment system at *http://www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select "docket search," then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: Toxic Chemical Release Reporting; Request for Comments on Proposed Renewal of Form R and Form A, Including Minor Form Revisions, and the Ratio-Based Burden Methodology.

ICR numbers: EPA ICR No. 1363.21, OMB Control No. 2025–0009.

ICR Status: This ICR is scheduled to expire on July 31, 2011. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. EPA expects the renewed ICR will be available for TRI Reporting Year 2011 submissions, which are due by July 1, 2012. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9. In the past, EPA has issued separate ICRs: (1) EPA ICR No. 1363.20, OMB Control No. 2025–0009 for Form R and (2) EPA ICR No. 1704.12, OMB Control No. 2025–0010 for Form A. In this ICR Renewal, EPA is transitioning from issuing two separate ICRs to issuing a single ICR–EPA ICR No. 1363.21, OMB Control No. 2025–0009 that encompasses both Form R and Form A.

Abstract: Pursuant to section 313 of EPCRA, certain facilities that manufacture, process, or otherwise use specified toxic chemicals in amounts above reporting threshold levels must submit annually to EPA and to designated State officials toxic chemical release forms containing information specified by EPA. 42 U.S.C. 11023. In addition, pursuant to section 6607 of the Pollution Prevention Act (PPA), facilities reporting under section 313 of EPCRA must also report pollution prevention and waste management data, including recycling information, for such chemicals. 42 U.S.C. 13106. These reports are compiled and stored in EPA's database known as the Toxics Release Inventory (TRI); TRI data are made readily available to the public.

Regulations at 40 CFR part 372, subpart B, require facilities that meet all of the following criteria to report:

1. The facility has 10 or more full-time employee equivalents (*i.e.,* a total of 20,000 hours worked per year or greater; see 40 CFR 372.3); and

2. The facility is included in a North American Industry Classification System (NAICS) Code listed at 40 CFR 372.23 or under Executive Order 13148, Federal facilities regardless of their industry classification; and

3. The facility manufactures (defined to include importing), processes, or otherwise uses any EPCRA section 313 (TRI) chemical in quantities greater than the established thresholds for the specific chemical in the course of a calendar year.

Facilities that meet the criteria must file a Form R report or, in some cases, may submit a Form A Certification Statement, for each listed toxic chemical for which the criteria are met. As specified in EPCRA section 313(a), the report for any calendar year must be submitted on or before July 1st of the following year. For example, reporting year 2009 data should have been submitted and certified on or before July 1, 2010.

The list of toxic chemicals subject to TRI reporting can be found at 40 CFR 372.65. This list is also published every year as Table II in the current version of the Toxics Release Inventory Reporting Forms and Instructions. The current TRI chemical list contains 593 chemicals and 30 chemical categories.

TRI data are used by environmental agencies, industry, and the public. EPA program offices use TRI data, along with other data, to help establish programmatic priorities, evaluate potential hazards to human health and the natural environment, and undertake appropriate regulatory and/or enforcement activities. Environmental and public interest groups use the data to better understand toxic chemical releases at the community level and to work with industry, government agencies, and others to promote reductions in toxic chemical releases. Industrial facilities use the TRI data to evaluate the efficiency of their production processes and to help track and communicate their progress in achieving pollution prevention goals.

The TRI data are unique in providing a multi-media (air, water, and land) picture of toxic chemical releases, transfers, and other waste management

activities by covered facilities on a yearly basis. While other environmental media programs provide some toxic chemical data and related permit data, the data are not directly comparable to TRI data with regard to the types of chemicals and industry sectors that are covered or the frequency of reporting. Facilities that are subject to TRI reporting must submit reports for each calendar year to EPA and the States in which they are located by July 1st of the following year.

Respondents may claim trade secrecy for a chemical's identity as described in EPCRA Section 322 and its implementing regulations in 40 CFR part 350. EPA will disclose information that is covered by a claim of trade secrecy only to the extent permitted by and in accordance with the procedures in 40 CFR part 350 and 40 CFR part 2.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 35.71 hours for Form R and 21.96 hours for Form A. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities (i.e., Facilities): 20,871.

Estimated Number of Responses: 73,727.

Estimated Total Overall Number of Responses per Respondent: 3.53.

Frequency of Response: Annual.

Estimated Total Annual Hour Burden: 3,515,751 hours.

Estimated Total Annual Cost: $174,451,565, includes $0 annualized capital or O&M costs.

What Changes are included in this ICR: OMB approved the current ICR for Form R and the ICR for the Form A Certification Statement on March 2, 2008, with original expiration dates of March 31, 2011. On February 17, 2010, OMB approved an extension of the expiration dates for both forms to July 31, 2011. The OMB approved the current burden estimates on March 2, 2008, where 3,217,280 hours for Form R and 515,901 hours for Form A, totaling 3,733,181 hours.

Changes in the Estimates: Several changes in the burden estimates have been approved by OMB since the OMB approvals of the ICRs on March 2, 2008. On March 20, 2009, OMB approved the merging of the ICR for TRI detailed reporting on dioxin and dioxin-like compounds (OMB 2025–0007, ICR 2086.02), into the TRI Form R ICR (currently OMB Control Number 2025–0009), increasing burden by 899 hours. Then on March 27, 2009, OMB approved changes in the number of responses and the burden hours for Form R and Form A to reflect the passage of Section 425 of the Omnibus Appropriations Act of 2009, which rescinded the December 2006 Toxics Release Inventory Burden Reduction Rule. As a result, the OMB-approved numbers for Form R were increased by 140,565 hours and for Form A burden were decreased by 318,418 yielding a net increase of 458,983 hours. Most recently, on November 26, 2010, the Addition of National Toxicology Program Carcinogens rule was published in the **Federal Register**. This rule is estimated to increase the number of reporting facilities by 74 and the number of Form Rs submitted by 186 with an associated burden increase of 6,641 hours.

Meanwhile, over the past several years, there has been a slight decrease in the number of facilities reporting to TRI. Based on the latest data for Reporting Year 2009 plus updates to reflect changes during the year of the ICR project—in this case, the modeled number of chemicals and facilities estimated to report under the Addition of National Toxicology Program Carcinogens rule, EPA now estimates the total number of combined Form R and Form A responses to be 73,727, with the associated total annual burden hours to be 3,515,751, and the annual cost to be $174,451,565. For a detailed explanation of the Agency's estimates of the respondent reporting burden and labor costs, please refer to the updated versions of the TRI Form R and A Supporting Statement and the document "Revising TRI Burden to Ratio-Based Methodology," which are available in the docket.

Changes in the form, as revised per the Response to Comments: EPA proposes to make the following changes to the ICR for the TRI Form R, with regard to the parent company field, and the Form A Certification Statement:

1. Replace the NA box from the Parent Company field (Part I: Sec. 5, 5.1) with a check box that reads "No U.S. Parent Company (for TRI Reporting purposes)." *Rationale:* The NA box is currently used to indicate either a foreign parent company or no higher level U.S. company. To better facilitate analysis of the TRI data, EPA is revising its instructions on how to report parent companies for TRI reporting purposes. The revised instructions provide that the highest-level U.S. company should be recorded or the "No U.S. Parent Company (for TRI Reporting purposes)" box should be selected.

2. Disaggregate the "Total Transfers" field and add fields to identify chemical discharge quantities to specific publicly owned treatment works (POTWs) (Part II: Sec 6.1).

Rationale: The current form collects a single "Total Transfer" quantity for transfers to all POTWs. Providing separate fields for the transfer quantity to each POTW will facilitate analysis of the releases to specific watersheds.

3. Section 8 enhancements, including:

- Change instructional statement on form to specify only "newly implemented" source reduction activities (Part II: Sec. 8.10).
- Add an N/A box to match associated text revisions (Part II: Sec. 8.10).
- Remove the "Yes" box and enlarge the text section for the question on optional pollution prevention information (Part II: Section 8.11).

Rationale: The existing form requests information on "any source reduction activities for this chemical during the reporting year;" but the Reporting Forms and Instructions requests information on "newly implemented" source reduction activities. This change on the form will make the form consistent with the instructions, and specify that only new activities should be reported. The Section 8 enhancements also provide a larger text box (8.11) where facilities can provide optional information on source reduction, recycling, or pollution control activities.

4. Add a new question to capture miscellaneous and optional information regarding the submission (Part II: Sec. 9., 9.1). *Rationale:* This new text box will allow facilities to provide optional, miscellaneous information that may be helpful to EPA and/or the public in using or interpreting their data (*e.g.,* facility closures, explanations for changes in release quantities, *etc.*).

5. Add NA boxes to Part II, Sections 5.3, 6.1, and 6.2. *Rationale:* Adding NA boxes to these sections will make the formatting of Form R and Form R Schedule 1 more consistent.

Dated: May 20, 2011.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2011–13101 Filed 5–25–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[D–VA–2011–0001; FRL–9305–9]

Delegation of Authority to the Commonwealth of Virginia To Implement and Enforce Additional or Revised National Emission Standards for Hazardous Air Pollutants and New Source Performance Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of delegation of authority.

SUMMARY: On April 4, 2011, EPA sent Virginia a letter acknowledging that Virginia's delegation of authority to implement and enforce National Emission Standards for Hazardous Air Pollutants (NESHAP) and New Source Performance Standards (NSPS) had been updated, as provided for under previously approved delegation mechanisms. To inform regulated facilities and the public of Virginia's updated delegation of authority to implement and enforce NESHAP and NSPS, EPA is making available a copy of EPA's letter to Virginia through this notice.

DATES: On April 4, 2011, EPA sent Virginia a letter acknowledging that Virginia's delegation of authority to implement and enforce additional and updated NESHAP and NSPS had been updated.

ADDRESSES: Copies of documents pertaining to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103–2029. Copies of Virginia's submittal are also available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219. Copies of Virginia's notice to EPA that Virginia has updated its incorporation by reference of Federal NESHAP and NSPS, and of EPA's response, may also be found posted on EPA Region III's Web site at: *http://www.epa.gov/reg3artd/airregulations/delegate/vadelegation.htm.*

FOR FURTHER INFORMATION CONTACT: Ray Chalmers, (215) 814–2061, or by e-mail at *chalmers.ray@epa.gov.*

SUPPLEMENTARY INFORMATION: Virginia notified EPA that Virginia has updated its incorporation by reference of Federal NESHAP and NSPS to include many such standards, as they were published in final form in the Federal Code of Federal Regulations dated July 1, 2010. EPA responded by sending Virginia a letter acknowledging that Virginia now has the authority to implement and enforce the NESHAP and NSPS as specified by Virginia in its notice to EPA, as provided for under previously approved automatic delegation mechanisms. All notifications, applications, reports and other correspondence required pursuant to the delegated standards must be submitted to both the US EPA Region III and to the Virginia Department of Environmental Quality. A copy of EPA's letter to Virginia follows:

Michael G. Dowd, Air Program Director, Virginia Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218.

Dear Mr. Dowd: The United States Environmental Protection Agency (EPA) has previously delegated to the Commonwealth of Virginia (Virginia) the authority to implement and enforce various Federal National Emissions Standards for Hazardous Air Pollutants (NESHAP) and New Source Performance Standards (NSPS), which are found at 40 CFR Parts 60, 61 and 63.[1] In those actions, EPA also delegated to Virginia the authority to implement and enforce any future EPA NESHAP or NSPS on the condition that Virginia legally adopt the future standards, make only allowed wording changes, and provide specified notice to EPA.

In a letter dated March 3, 2011, Virginia informed EPA that Virginia had updated its incorporation by reference of Federal NESHAP and NSPS to include many such standards, as they were published in final form in the Federal Code of Federal Regulations dated July 1, 2010. Virginia noted that its intent in updating its incorporation by reference of the NESHAP and NSPS was to retain the authority to enforce all standards included in the revisions, as per the provisions of EPA's previous delegation actions. Virginia committed to enforcing the Federal standards in conformance with the terms of EPA's previous delegations of authority. Virginia made only allowed wording changes.

Virginia provided copies of its revised regulations specifying the NESHAP and NSPS which Virginia has adopted by reference. These revised regulations are entitled 9 VAC 5–50 "New and Modified Stationary Sources," and 9 VAC 5–60 "Hazardous Air Pollutant Sources." These revised regulations have an effective date of March 2, 2011.

Accordingly, EPA acknowledges that Virginia now has the authority, as provided for under the terms of EPA's previous delegation actions, to implement and enforce the NESHAP and NSPS standards which Virginia has adopted by reference in Virginia's revised regulations 9 VAC 5–50 and 9 VAC 5–60, both effective on March 2, 2011.

Please note that on December 19, 2008, in *Sierra Club* v. *EPA,*[2] the United States Court of Appeals for the District of Columbia Circuit vacated certain provisions of the General Provisions of 40 CFR Part 63 relating to exemptions for startup, shutdown, and malfunction (SSM). On October 16, 2009, the Court issued a mandate vacating these SSM exemption provisions, which are found at 40 CFR 63.6(f)(1) and (h)(1).

Accordingly, EPA no longer allows sources the SSM exemption as provided for in the vacated provisions at 40 CFR 63.6(f)(1) and (h)(1), even though EPA has not yet formally removed these SSM exemption provisions from the General Provisions of 40 CFR Part 63. Because Virginia incorporated 40 CFR Part 63 by reference, Virginia should also no longer allow sources to use the former SSM exemption from the General Provisions of 40 CFR Part 63 due to the Court's ruling in *Sierra Club* vs. *EPA.*

EPA appreciates Virginia's continuing NESHAP and NSPS enforcement efforts, and also Virginia's decision to take automatic delegation of additional and more recent NESHAP and NSPS by adopting them by reference.

Sincerely,

Diana Esher,

Director, Air Protection Division.

This notice acknowledges the update of Virginia's delegation of authority to implement and enforce NESHAP and NSPS.

Dated: April 26, 2011.

Diana Esher,

Director, Air Protection Division, Region III.

[FR Doc. 2011–11823 Filed 5–25–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[D–PA–2011–0001; FRL–9305–8]

Delegation of Authority to the Commonwealth of Pennsylvania To Implement and Enforce Additional National Emission Standards for Hazardous Air Pollutants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of delegation of authority.

SUMMARY: Pennsylvania has requested that EPA delegate to Pennsylvania the authority to implement and enforce twelve additional National Emission

[1] EPA has posted copies of these actions at: *http://www.epa.gov/reg3artd/airregulations/delegate/vadelegation.htm.*

[2] *Sierra Club* v. *EPA,* 551 F.3rd 1019 (DC Cir. 2008).

Standards for Hazardous Air Pollutants (NESHAP) for area sources, and EPA has responded by sending Pennsylvania a letter approving this delegation, pursuant to previously approved delegation mechanisms. To inform regulated facilities and the public of EPA's delegation to Pennsylvania of the authority to implement and enforce these twelve additional NESHAP for area sources, EPA is making available a copy of EPA's letter to Pennsylvania through this notice.

DATES: On January 5, 2011, EPA sent Pennsylvania a letter acknowledging the delegation to Pennsylvania of the authority to implement and enforce twelve additional NESHAP for area sources.

ADDRESSES: Copies of documents pertaining to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103–2029. Copies of Pennsylvania's submittal are also available at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105. Copies of Pennsylvania's request for the delegation of authority to implement additional NESHAP (except for the appendices to that request) and of EPA's response, may also be found posted on EPA Region III's Web site at: *http://www.epa.gov/reg3artd/airregulations/delegate/padelegation.htm.*

FOR FURTHER INFORMATION CONTACT: Ray Chalmers, (215) 814–2061, or by e-mail at *chalmers.ray@epa.gov*.

SUPPLEMENTARY INFORMATION: Pennsylvania requested that EPA delegate to Pennsylvania the authority to implement and enforce twelve additional NESHAP for area sources. On January 5, 2011, EPA sent Pennsylvania a letter informing Pennsylvania that EPA had delegated to the Commonwealth the authority to implement and enforce these twelve additional NESHAP for area sources, pursuant to previously approved delegation mechanisms. All notifications, applications, reports and other correspondence required pursuant to the newly delegated standards must be submitted to both the US EPA Region III and to the Pennsylvania Department of Environmental Protection. A copy of EPA's letter to Pennsylvania follows:

"Ms. Joyce E. Epps, Esquire
Director of Air Quality
Pennsylvania Department of Environmental Protection
Rachel Carson State Office Building
P.O. Box 8468
Harrisburg, PA 17105–8468

Dear Ms. Epps:

The Environmental Protection Agency (EPA) has previously delegated to the Commonwealth of Pennsylvania (Pennsylvania) the authority to implement and enforce numerous specified Federal National Emissions Standards for Hazardous Air Pollutants (NESHAP) and New Source Performance Standards (NSPS), which are found at 40 CFR Parts 60, 61 and 63.[1] In those actions EPA also automatically delegated to Pennsylvania the authority to implement and enforce future NESHAP applicable to major sources, future changes to any of the specific NESHAP applicable to area sources that Pennsylvania had been delegated the authority to implement and enforce, and any future NSPS requirements.

EPA also previously approved processes by which Pennsylvania may easily request and quickly receive delegation of authority to implement and enforce additional NESHAP applicable to area sources. As part of Pennsylvania's Title V Operating Permits Program approval,[2] EPA promulgated full approval under CAA section 112(l)(5) and 40 CFR 63.91 of the State's program for receiving delegation of the CAA section 112 standards that are unchanged from Federal standards as promulgated in 40 CFR part 63. That approval allows Pennsylvania to request and receive delegation of NESHAP for sources covered by the 40 CFR part 70 program, including area sources which are subject to NESHAP which require area sources to obtain part 70 program permits. In addition, EPA has separately approved a mechanism by which Pennsylvania may request and receive delegation of any additional NESHAP applicable to area sources which are not covered by the 40 CFR part 70 operating permits program.[3] That mechanism is for Pennsylvania to adopt the additional NESHAP applicable to area sources without changes and to send EPA a letter requesting delegation of those additional NESHAP.

In a letter dated December 10, 2009, Pennsylvania requested delegation of authority, by reference, to implement and enforce NESHAP as codified in 40 CFR Part 63 for the following source categories: (1) Subpart AAAA (relating to municipal solid waste landfills); (2) Subpart BBBBBB (relating to gasoline bulk terminals, bulk plants and pipeline facilities); (3) Subpart EEE (relating hazardous waste combustion; (4) Subpart LLL (relating to Portland cement manufacturing industry; (5) Subpart NNNNNN (relating to chromium compounds), (6) Subpart OOOOOO (relating to flexible polyurethane foam fabrication and production area sources; (7) Subpart PPPPPP (relating to lead acid battery manufacturing area sources; (8) Subpart SSSSSS (relating to glass manufacturing area sources); (10) Subpart TTTTTT (relating to secondary nonferrous metals processing area sources; (11) Subpart YYYYY (relating to electric arc furnace steelmaking facilities, and (12) Subpart ZZZZZ (relating to iron and steel foundries area sources). Pennsylvania also requested "automatic delegation" of future amendments to these NESHAP.

In its delegation request letter Pennsylvania confirmed that the EPA rules in 40 CFR Part 63 "are applicable, without revisions, to affected sources in Pennsylvania on the effective dates published in the **Federal Register**." Pennsylvania also confirmed that it continues to have adequate legal authority to implement and enforce such Federal rules.

Pennsylvania's December 10, 2009 request for delegation of authority to implement and enforce additional Federal NESHAP is approvable under the previously approved delegation processes discussed above. Accordingly, EPA hereby delegates to Pennsylvania the authority to implement and enforce the additional NESHAP for which Pennsylvania requested delegation in its December 10, 2009 submittal.

Please note that on December 19, 2008, in *Sierra Club* v. EPA,[4] the United States Court of Appeals for the District of Columbia Circuit vacated certain provisions of the General Provisions of 40 CFR Part 63 relating to exemptions for startup, shutdown, and malfunction (SSM). On October 16, 2009, the Court issued a mandate vacating these SSM exemption provisions, which are found at 40 CFR § 63.6(f)(1) and (h)(1).

Accordingly, EPA no longer allows sources the SSM exemption as provided for in the vacated provisions at 40 CFR § 63.6(f)(1) and (h)(1), even though EPA has not yet formally removed these SSM exemption provisions from the General Provisions of 40 CFR Part 63. Because Pennsylvania incorporates 40 CFR Part 63 by reference, Pennsylvania should also no longer allow sources to use the former SSM exemption from the General Provisions of 40 CFR Part 63 due to the Court's ruling in *Sierra Club* vs. EPA.

EPA appreciates Pennsylvania's continuing NESHAP and NSPS enforcement efforts, and also Pennsylvania's decision to request delegation of additional NESHAP.

Sincerely,
Diana Esher, Director
Air Protection Division"

In the above letter EPA approved Pennsylvania's December 10, 2009 request for delegation of additional NESHAP for area sources in its entirety. EPA erred in that letter in not listing one of the additional NESHAP for which Pennsylvania had requested delegation, NESHAP Subpart RRRRRR for Clay Ceramics Manufacturing Area Sources. To address this oversight, EPA sent Pennsylvania a subsequent letter on April 4, 2011 confirming that EPA's approval of Pennsylvania's December 10, 2009 request for delegation had

[1] EPA has posted copies of these actions at: http://www.epa.gov/reg3artd/airregulations/delegate/padelegation.htm

[2] 61 FR 39597 (July 30, 1996)

[3] 66 FR 47579 (September 13, 2001)

[4] *Sierra Club* v. *EPA,* 551 F.3rd 1019 (D.C. Cir. 2008)

included approval of the delegation of NESHAP Subpart RRRRRR and of any future amendments to Subpart RRRRRR. A copy of that letter is provided as follows:

"Ms. Joyce E. Epps, Director

Bureau of Air Quality

Pennsylvania Department of Environmental Protection

Rachel Carson State Office Building

P.O. Box 8468

Harrisburg, PA 17105–8468

Dear Ms. Epps:

On January 5, 2011, the U.S. Environmental Protection Agency (EPA) delegated to Pennsylvania the authority to implement and enforce all of the additional National Emissions Standards for Hazardous Air Pollutants (NESHAP) for which Pennsylvania had requested delegation in a December 10, 2009 submittal. EPA granted this delegation pursuant to previously approved delegation mechanisms.

In EPA's January 5, 2011 approval EPA listed for reference the additional NESHAP for which Pennsylvania had requested delegation in its December 10, 2009 submittal. EPA has since noted that its listing was incomplete in that it did not include one of the NESHAP for which Pennsylvania had requested delegation, NESHAP Subpart RRRRRR for Clay Ceramics Manufacturing Area Sources.

This is to confirm that EPA's January 5, 2011 approval of Pennsylvania's December 10, 2009 request for delegation of authority to implement and enforce additional NESHAP also delegated to Pennsylvania the authority to implement and enforce NESHAP Subpart RRRRRR for Clay Ceramics Manufacturing Area Sources.

EPA appreciates Pennsylvania's continuing efforts to implement and enforce all delegated NESHAP. If you have any questions, please contact me at 814–2706 or Ray Chalmers of my staff at 215–814–2061.

Sincerely,

Diana Esher, Director

Air Protection Division"

This notice confirms EPA's delegation to Pennsylvania of the authority to implement and enforce additional NESHAP.

Dated: April 26, 2011.

Diana Esher,

Director, Air Protection Division, Region III.

[FR Doc. 2011–11787 Filed 5–25–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9311–4]

Problem Formulation for Human Health Risk Assessments of Pathogens in Land-Applied Biosolids

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: EPA is announcing the availability of a final report titled, "Problem Formulation for Human Health Risk Assessments of Pathogens in Land-Applied Biosolids" EPA/600/R–08/035F, which was prepared by the National Center for Environmental Assessment (NCEA) within EPA's Office of Research and Development (ORD).

DATES: This document will be available on or about May 26, 2011.

ADDRESSES: The document will be available electronically through the NCEA Web site at *http://www.epa.gov/ncea.* A limited number of paper copies will be available from the EPA's National Service Center for Environmental Publications (NSCEP), P.O. Box 42419, Cincinnati, OH 45242; telephone: 1–800–490–9198; facsimile: 301–604–3408; e-mail: *nscep@bps-lmit.com*. Please provide your name, your mailing address, the title and the EPA number of the requested publication.

FOR FURTHER INFORMATION CONTACT: The Information Management Team, National Center for Environmental Assessment (8601P), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Telephone: 703–347–8561; fax: 703–347–8691; e-mail: *nceadc.comment@epa.gov.*

SUPPLEMENTARY INFORMATION: This document may be useful to Federal, State or local risk assessors and managers, contractors, or other parties interested in conducting microbial risk assessments on land-applied biosolids. In particular, this document provides concepts and planning considerations for conducting human health risk assessments on potential pathogens in land-applied biosolids. The document does not represent guidance, nor does it constitute a risk assessment for pathogens in land-applied biosolids. As one component of U.S. EPA's action plan for its biosolids program (*http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=231964*), this document summarizes the existing literature; defines critical pathogen stressors; develops conceptual models linking the most likely stressors, pathways and health responses of concern; evaluates the overall quality and utility of available risk assessment data; highlights existing tools and methodologies; and provides an outline of an Analysis Plan that identifies gaps in knowledge and research and methods needed to provide more scientifically defensible assessments relevant to U.S. EPA's decision needs. The document has been updated and revised by EPA based on comments received from the public and an independent, external panel of scientific experts (73 FR 54400).

Dated: May 18, 2011.

Darrell A. Winner,

Acting Director, National Center for Environmental Assessment.

[FR Doc. 2011–13106 Filed 5–25–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9311–5]

Gulf of Mexico Citizen Advisory Committee; Request for Nominations to the Gulf of Mexico Citizen Advisory Committee (GMCAC)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency (EPA), invites nominations from a diverse range of qualified candidates to be considered for appointment to the Gulf of Mexico Citizen Advisory Committee (GMCAC). Vacancies are anticipated to be filled by August 30, 2011. Sources in addition to this **Federal Register** Notice may also be utilized in soliciting nominees.

Background: The GMCAC is a Federal advisory committee chartered under the Federal Advisory Committee Act (FACA), Public Law 920463 5 U.S.C. App.2. EPA is establishing the Gulf of Mexico Citizen Advisory Committee (GMCAC) to provide independent citizen advice to the EPA Administrator on a broad range of environmental issues affecting the five Gulf of Mexico Coastal States. Members serve as representatives of citizens and citizen groups. Members are appointed by the EPA Administrator for a two or three-year term with a possibility of reappointment to a second term. The GMCAC usually is expected to meet as needed, but at least quarterly, and the average workload for the members is approximately 3 to 5 hours per month. EPA may provide reimbursement for travel and other incidental expenses

associated with official government business. EPA is seeking nominations of citizens from the five Gulf Coastal States of Alabama, Florida, Louisiana, Mississippi, and Texas. EPA values and welcomes diversity. In an effort to obtain nominations of diverse candidates, EPA encourages nominations of women and men of all racial and ethnic groups. Nominations will be evaluated on the basis of several criteria, including:

- The background and experiences that would help members contribute to the diversity of perspectives on the committee (*e.g.,* geographic, economic, social, cultural, educational, and other considerations).

- Interpersonal, oral and written communications, and consensus-building skills,

- Ability to volunteer time to attend meetings, participate in teleconference meetings, attend listening sessions with the Administrator or other senior level officials, develop policy recommendations to the Administrator, and prepare reports and advice letters. Nominations should include a resume and a short biography describing how the nominee meets the above criteria and other information that may be helpful in evaluating the nomination, as well as the nominee's current business address, e-mail address, and daytime telephone number. Interested candidates may self-nominate.

To help the Agency in evaluating the effectiveness of its outreach efforts, please tell us how you learned of this opportunity.

ADDRESSES: Submit nominations to Gloria D. Car, Designated Federal Officer, U.S. Environmental Protection Agency, Gulf of Mexico Program Office, Mail Code EPA/GMPO, Building 1100, Room 232, Stennis Space Center, MS 39529. You may also e-mail nominations with subject line COMMITTEERESUME2011 to *car.gloria@epa.gov.*

FOR FURTHER INFORMATION CONTACT: Gloria D. Car, Designated Federal Officer, U.S. EPA, Gulf of Mexico Program Office at (228) 688–2421 or fax (228) 688–2709 or e-mail *car.gloria@epa.gov.*

Dated: May 19, 2011.

Gloria D. Car,

Designated Federal Officer.

[FR Doc. 2011–13104 Filed 5–25–11; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collections Being Submitted for Review and Approval to the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

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. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a currently valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before June 27, 2011. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202–395–5167 or via e-mail to *Nicholas_A._Fraser@omb.eop.gov* and to the Federal Communications Commission via e-mail to *PRA@fcc.gov* and *Cathy.Williams@fcc.gov.* To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://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, and (6) when the list of FCC ICRs currently under review appears, look for the title of this ICR (or its OMB Control Number, if there is one) and then click on the ICR Reference Number to view detailed information about this ICR.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Cathy Williams on (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–xxxx.

Title: Satellite Digital Audio Radio Service (SDARS).

Form No.: Not applicable.

Type of Review: New information collection.

Respondents: Business and other for-profit.

Number of Respondents/Responses: 1 respondent; 74 responses.

Estimated Time per Response: 4–12 hours per response.

Frequency of Response: On occasion reporting requirement; recordkeeping requirement: Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in Sections 47 U.S.C. 701–744; Sections 4, 301, 302, 303, 307, 309, and 332 of the Communications Act, as amended 47 U.S.C. 154, 301, 302a, 303, 307, 309, and 332.

Total Annual Burden: 400 hours.

Annual Cost Burden: $171,320.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: In general, there is no need for confidentiality with this collection of information.

Needs and Uses: The Federal Communications Commission ("Commission") is requesting approval from the Office of Management and Budget (OMB) to establish a new information collection titled, "Satellite Digital Audio Radio Service (SDARS), Rule Sections: 25.144(e)(3), (e)(8), (e)(9); 25.263(b), (c)."

The Commission released a Second Report and Order (FCC 10–82; IB Docket No. 95–91) on May 20, 2010, in which the agency accomplished three goals: (1) Adopted technical rules governing the operation of SDARS repeaters that will

not constrain their function or deployment but will limit the potential for harmful interference to adjacent Wireless Communications Service (WCS) spectrum users by requiring SDARS licensees to notify WCS licensees prior to the deployment of new or modified SDARS terrestrial repeaters; (2) established a blanket-licensing regime for repeaters up to 12 kilowatts (kW) average equivalent isotropically radiated power (EIRP) to facilitate the flexible deployment of SDARS repeaters while ensuring that such repeater operations comply with the Commission's rules regarding RF safety, antenna marking and lighting, equipment authorization and international agreements; and, (3) established site-by-site licensing regime for repeaters operating above 12 kW (average) EIRP, or otherwise not in compliance with the rules adopted for SDARS terrestrial repeater operations.

The information collection requirements accounted for in this collection are necessary to determine the technical and legal qualifications of SDARS applicants or licensees to operate a station, transfer or assign a license, and to determine whether the authorization is in the public interest, convenience and necessity. Without such information, the Commission could not determine whether to permit respondents to provide SDARS services in the U.S. Therefore, the Commission would be unable to fulfill its statutory responsibilities in accordance with the Communications Act of 1934, as amended.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2011–13071 Filed 5–25–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collections Being Submitted for Review and Approval to the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

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. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a currently valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before June 27, 2011. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202–395–5167 or via e-mail to *Nicholas_A._Fraser@omb.eop.gov* and to the Federal Communications Commission via e-mail to *PRA@fcc.gov* and *Paul.Laurenzano@fcc.gov.* To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://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, and (6) when the list of FCC ICRs currently under review appears, look for the title of this ICR (or its OMB Control Number, if there is one) and then click on the ICR Reference Number to view detailed information about this ICR.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Paul Laurenzano on (202) 418–1359.

OMB Control Number: 3060–0715.

Title: Telecommunications Carriers' Use of Customer Proprietary Network Information (CPNI) and Other Customer Information, CC Docket No. 96–115.

Form Number: N/A.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 6,017 respondents; 137,256,125 responses.

Estimated Time per Response: 0.002 hours–50 hours.

Frequency of Response: On occasion, one time, annual and biennial reporting requirements, recordkeeping requirement, and third party disclosure requirements.

Obligation to Respond: Mandatory as required by section 222 of the Communications Act of 1934, as amended, 47 U.S.C. 222.

Total Annual Burden: 350,704 hours.

Total Annual Cost: $3,000,000.

Privacy Act Impact Assessment: No impacts.

Nature and Extent of Confidentiality: The Commission is not requesting that the respondents submit confidential information to the FCC. Respondents may, however, request confidential treatment for information they believe to be confidential under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: Section 222 of the Communications Act of 1934, as amended, 47 U.S.C. 222, establishes the duty of telecommunications carriers to protect the confidentiality of its customers' proprietary information. This Customer Proprietary Network Information (CPNI) includes personally identifiable information derived from a customer's relationship with a provider of telecommunications services. This information collection implements the statutory obligations of section 222. These regulations impose safeguards to protect customers' CPNI against unauthorized access and disclosure. In March 2007, the Commission adopted new rules that focused on the efforts of providers of telecommunications services to prevent pretexting. These rules require providers of telecommunications services to adopt additional privacy safeguards that, the Commission believes, will limit pretexters' ability to obtain unauthorized access to the type of personal customer information from carriers that the Commission regulates. In addition, in furtherance of the Telephone Records and Privacy Protection Act of 2006, the

Commission's rules help ensure that law enforcement will have necessary tools to investigate and enforce prohibitions on illegal access to customer records.

Federal Communications Commission.

Bulah P. Wheeler,

Deputy Manager, Office of the Secretary, Office of Managing Director.

[FR Doc. 2011–13017 Filed 5–25–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Submitted for Review and Approval to the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

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. *Comments are requested concerning:* (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a currently valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before June 27, 2011. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202–395–5167 or via e-mail to *Nicholas_A._Fraser@omb.eop.gov* and to the Federal Communications Commission via e-mail to *PRA@fcc.gov* and *Benish.Shah@fcc.gov.* To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://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, and (6) when the list of FCC ICRs currently under review appears, look for the title of this ICR (or its OMB Control Number, if there is one) and then click on the ICR Reference Number to view detailed information about this ICR.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Benish Shah on (202) 418–7866.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0053.

Title: Experimental Authorization Applications-FCC Form 702, Consent to Assign; and FCC Form 703, Consent to Transfer Control of Corporation Holding Station License.

Form Nos.: FCC Forms 702 and 703.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit and not-for-profit institutions.

Number of Respondents and Responses: 50 respondents; 50 responses.

Estimated Time per Response: 0.6 hours (36 minutes).

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. sections 154, 301, 302 and 303.

Total Annual Burden: 30 hours.

Total Annual Cost: $3,000.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: There is no need for confidentiality. However, if respondents wish to request that their information be withheld from public inspection, they may do so under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: The Commission will submit this revised information collection to the Office of Management and Budget (OMB) after this comment period to obtain the three year clearance from them. The Commission is reporting a 6 hour increase and a $600 annual cost increase. The reason for the increase is that the Commission is merging the burden estimates together into one comprehensive experimental authorization application information collection.

The Commission currently has OMB approval for FCC Form 702 under OMB Control Number 3060–0068 and for FCC Form 703 under OMB Control Number 3060–0053. The Commission is revising this information collection (IC) to merge FCC Form 702 into this collection. There is no change in the reporting or *16772 third party disclosure requirements. We are simply consolidating these two information collections into one comprehensive collection. Upon OMB approval, the Commission will discontinue OMB Control Number 3060–0068 and retain OMB Control Number 3060–0053 as the active OMB number.

Federal Communications Commission.

Bulah P. Wheeler,

Deputy Manager, Office of the Secretary, Office of Managing Director.

[FR Doc. 2011–13019 Filed 5–25–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collections Being Submitted for Review and Approval to the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

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. *Comments are requested concerning:* (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of

automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a currently valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before June 27, 2011. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202–395–5167 or via e-mail to *Nicholas_A._Fraser@omb.eop.gov* and to the Federal Communications Commission via e-mail to *PRA@fcc.gov* and *Cathy.Williams@fcc.gov. To view a copy of this information collection request (ICR) submitted to OMB:* (1) Go to the Web page *http://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, and (6) when the list of FCC ICRs currently under review appears, look for the title of this ICR (or its OMB Control Number, if there is one) and then click on the ICR Reference Number to view detailed information about this ICR.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Cathy Williams on (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0027.

Title: Application for Construction Permit for Commercial Broadcast Station, FCC Form 301.

Form Number: FCC Form 301.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit entities; State, local or Tribal governments.

Number of Respondents and Responses: 4,544 respondents; 7,980 responses.

Estimated Time per Response: 1–6.25 hours (average).

Frequency of Response: On occasion reporting requirement; Third-party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for the information collection requirements is contained in Sections 154(i), 303 and 308 of the Communications Act of 1934, as amended.

Total Annual Burden: 20,257 hours.

Total Annual Costs: $88,116,793.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Impact Assessment: No impact(s).

Needs and Uses: On January 28, 2010, the Commission adopted a First Report and Order and Further Notice of Proposed Rulemaking in MB Docket No. 09–52, FCC 10–24. On March 3, 2011, the Commission adopted a Second Report and Order ("Second R&O"), First Order on Reconsideration, and Second Further Notice of Proposed Rulemaking in MB Docket No. 09–52, FCC 11–28. The Second R&O adopts modifications to the manner in which the Commission awards preferences to applicants under the provisions of Section 307(b) of the Act. For Section 307(b) purposes, licensees and permittees seeking to change community of license must demonstrate that the facility at the new community represents a preferential arrangement of allotments (FM) or assignments (AM) over the current facility. Applications that are submitted to change an existing radio facility's community of license must include an Exhibit containing information demonstrating that the proposed change of community of license will result in a preferential arrangement of allotments or assignments under Section 307(b).

Consistent with actions taken by the Commission in the Second R&O, the Instructions to the Form 301 have been revised to incorporate the information that must be included in the Exhibit, which is responsive to the "Community of License Change—Section 307(b)" question in the Form 301. The Form 301 itself has not been revised, nor have any questions been added to the Form 301. Rather, the Instructions for the Form 301 have been revised to assist applicants with completing the mandatory, responsive Exhibit.

The modifications to the Commission's allotment and assignment policies adopted in the Second R&O include a rebuttable "Urbanized Area service presumption" under Priority (3), whereby an application to locate or relocate a station as the first local transmission service at a community located within an Urbanized Area, that would place a daytime principal community signal over 50 percent or more of an Urbanized Area, or that could be modified to provide such coverage, will be presumed to be a proposal to serve the Urbanized Area rather than the proposed community.

In the case of an AM station, the determination of whether a proposed facility "could be modified" to cover 50 percent or more of an Urbanized Area will be made based on the applicant's certification in the Exhibit that there could be no rule-compliant minor modifications to the proposal, based on the antenna configuration or site, and spectrum availability as of the filing date, that could cause the station to place a principal community contour over 50 percent or more of an Urbanized Area. In the case of an FM station, the determination of whether a proposed facility "could be modified" to cover 50 percent or more of an Urbanized Area will be based on an applicant's certification in the Exhibit that there are no existing towers in the area to which, at the time of filing, the applicant's antenna could be relocated pursuant to a minor modification application to serve 50 percent or more of an Urbanized Area. Specifically, an FM applicant would need to certify that there could be no rule-compliant minor modification on the proposed channel to provide a principal community signal over 50 percent or more of an Urbanized Area, in addition to covering the proposed community of license. In doing so, FM applicants will be required to consider all existing registered towers in the Commission's Antenna Structure Registration database, in addition to any unregistered towers currently used by licensed radio stations. Furthermore, we expect all applicants to consider widely-used techniques, such as directional antennas and contour protection, when certifying that the proposal could not be modified to provide a principal community signal over the community of license and 50 percent or more of an Urbanized Area.

To the extent the applicant wishes to rebut the Urbanized Area service presumption, the Exhibit must include a compelling showing (a) that the proposed community is truly independent from the Urbanized Area; (b) of the community's specific need for an outlet of local expression separate from the Urbanized Area; and (c) the ability of the proposed station to provide that outlet.

For applicants making a showing under Priority (4), other public interest matters, the Exhibit must provide a description of all populations gaining or losing third, fourth, or fifth reception service, and the percentage of the population in the station's current protected contour that will lose third, fourth, or fifth reception service, if any. The Commission will also require applicants to not only set forth the populations gaining and losing service under the proposal, but also the numbers of services those populations will receive if the application is granted, and an explanation as to how the proposal provides a preferential arrangement of allotments or assignments and advances the revised Section 307(b) policies.

The Commission specifically stated that these modified allotment and assignment procedures will apply to any applications to change community of license that are pending as of the release date of the Second R&O, March 3, 2011. Therefore, an applicant with a pending community of license change application must file an amendment demonstrating how the proposal represents a preferential arrangement of allotments or assignments under the policy modifications adopted in the Second R&O. For example, an applicant claiming Priority (3) would have to file the above-referenced "could be modified" certification, if appropriate, or a showing to rebut the Urbanized Area service presumption, if applicable. Similarly, an applicant claiming Priority (4) will have to make a showing as to the populations gaining or losing service under the proposed community of license change, as well as the numbers of services those populations will receive if the application is granted, and an explanation as to how the proposal advances the revised Section 307(b) priorities set out in the Second R&O. See Second R&O, FCC 11–28, at 22–23) 39. Such amendments must be filed once the information collection requirements are approved by OMB and the effective date for the requirements is announced by the Commission. Finally, under Priority (4) applicants may offer any other information they believe pertinent to a public interest showing and relevant to the Commission's consideration.

OMB Control Number: 3060–0029.

Title: Application for Construction Permit for Reserved Channel Noncommercial Educational Broadcast Station, FCC Form 340.

Form Number: FCC Form 340.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit entities; State, local or Tribal governments.

Number of Respondents and Responses: 2,765 respondents; 2,765 responses.

Estimated Time per Response: 1–6 hours (average).

Frequency of Response: On occasion reporting requirement; Third-party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for the information collection requirements is contained in Sections 154(i), 303 and 308 of the Communications Act of 1934, as amended.

Total Annual Burden: 7,150 hours.

Total Annual Costs: $29,079,700.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Impact Assessment: No impact(s).

Needs and Uses: On January 28, 2010, the Commission adopted a First Report and Order in the Matter of Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures, MB Docket No. 09–52, FCC 10–24 (released February 3, 2010). On March 3, 2011, the Commission adopted a Second Report and Order, First Order on Reconsideration, and Second Further Notice of Proposed Rulemaking in MB Docket No. 09–52, FCC 11–28 (released March 3, 2011). In the First Report and Order, the Commission adopted the Tribal Priority proposed in the Notice of Proposed Rule Making, with some modifications. Under the Tribal Priority, a Section 307(b) priority will apply to an applicant meeting all of the following criteria: (1) The applicant is either a Federally recognized Tribe or Tribal consortium, or an entity 51 percent or more owned or controlled by a Tribe or Tribes; (2) at least 50 percent of the daytime principal community contour of the proposed facilities covers Tribal Lands, in addition to meeting all other Commission technical standards; (3) the specified community of license is located on Tribal Lands; and (4) the applicant proposes the first local Tribal-owned noncommercial educational transmission service at the proposed community of license. The proposed Tribal Priority would apply, if at all, before the fair distribution analysis currently used to evaluate noncommercial educational applications. The Tribal Priority does not prevail over an applicant proposing first overall reception service to a significant population. The First Order on Reconsideration modifies the initially adopted Tribal Priority coverage requirement, by creating an alternative coverage standard under criterion (2), enabling Tribes to qualify for the Tribal Priority even when their Tribal Lands are too small or irregularly shaped to comprise 50 percent of a radio station's signal. In such circumstances, Tribes may claim the priority (i) if the proposed principal community contour of the station encompasses 50 percent or more of that Tribe's Tribal Lands, but does not cover more than 50 percent of the Tribal lands of a non-applicant Tribe, (ii) serves at least 2,000 people living on Tribal Lands, and (iii) the total population on Tribal Lands residing within the station's service contour constitutes at least 50 percent of the total covered population, with provision for waivers as necessary to effectuate the goals of the Tribal Priority. This modification will enable Tribes with small or irregularly shaped lands to qualify for the Tribal Priority. The First Order on Reconsideration also provides that, under criterion (2), even an applicant whose Tribal Lands would be covered by 50 percent or more of the proposed principal community contour (the original coverage standard set forth in the First Report and Order) may not claim the credit if the principal community contour would cover more than 50 percent of the Tribal Lands of a non-applicant Tribe.

FCC Form 340 and its instructions have been revised to accommodate those applicants qualifying for the new Tribal Priority. After adoption of the First Report and Order, we added new Questions 1 and 2, which seek information as to the applicant's eligibility for the Tribal Priority and direct applicants claiming the priority to prepare and attach an exhibit, to Section III. The instructions for Section III were also revised to assist applicants with completing the new questions and preparing the exhibit. In the First Order on Reconsideration, the Commission added an alternative definition of "Tribal Coverage" to that adopted in the First Report and Order. Accordingly, we have modified the instructions for Section III, Question 2, to comport with the new alternative Tribal Coverage definition. The form itself has not been revised, nor have any questions been added to Form 340.

OMB Control Number: 3060–0996.

Title: AM Auction Section 307(b) Submissions.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit entities; State, local or Tribal governments.

Number of Respondents and Responses: 210 respondents; 210 responses.

Estimated Time per Response: 0.5–6 hours (average).

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for the information collection requirements is contained in Sections 154(i), 307(b) and 309 of the Communications Act of 1934, as amended.

Total Annual Burden: 1,029 hours.

Total Annual Costs: $2,126,100.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Impact Assessment: No impact(s).

Needs and Uses: On January 28, 2010, the Commission adopted a First Report and Order and Further Notice of Proposed Rulemaking ("First R&O") in MB Docket No. 09–52, FCC 10–24. The First R&O adopted changes to certain procedures associated with the award of broadcast radio construction permits by competitive bidding, including modifications to the manner in which it awards preferences to applicants under the provisions of Section 307(b). In the First R&O, the Commission added a new Section 307(b) priority that would apply only to Native American and Alaska Native Tribes, Tribal consortia, and majority Tribal-owned entities proposing to serve Tribal lands. As adopted in the First R&O, the priority is only available when all of the following conditions are met: (1) The applicant is either a Federally recognized Tribe or Tribal consortium, or an entity that is 51 percent or more owned or controlled by a Tribe or Tribes; (2) at least 50 percent of the area within the proposed station's daytime principal community contour is over that Tribe's Tribal lands, in addition to meeting all other Commission technical standards; (3) the specified community of license is located on Tribal lands; and (4) in the commercial AM service, the applicant must propose first or second aural reception service or first local commercial Tribal-owned transmission service to the proposed community of license, which must be located on Tribal lands. Applicants claiming Section 307(b) preferences using these factors will submit information to substantiate their claims.

On March 3, 2011, the Commission adopted a Second Report and Order ("Second R&O"), First Order on Reconsideration, and Second Further Notice of Proposed Rulemaking in MB Docket No. 09–52, FCC 11–28. The First Order on Reconsideration modifies the initially adopted Tribal Priority coverage requirement, by creating an alternate coverage standard under criterion (2), enabling Tribes to qualify for the Tribal Priority even when their Tribal lands are too small or irregularly shaped to comprise 50 percent of a station's signal. In such circumstances, Tribes may claim the priority (i) if the proposed principal community contour encompasses 50 percent or more of that Tribe's Tribal lands, but does not cover more than 50 percent of the Tribal lands of a non-applicant Tribe; (ii) serves at least 2,000 people living on Tribal lands, and (iii) the total population on Tribal lands residing within the station's service contour constitutes at least 50 percent of the total covered population, with provision for waivers as necessary to effectuate the goals of the Tribal Priority. This modification will now enable Tribes with small or irregularly shaped lands to qualify for the Tribal Priority.

The modifications to the Commission's allotment and assignment policies adopted in the Second R&O include a rebuttable "Urbanized Area service presumption" under Priority (3), whereby an application to locate or relocate a station as the first local transmission service at a community located within an Urbanized Area, that would place a daytime principal community signal over 50 percent or more of an Urbanized Area, or that could be modified to provide such coverage, will be presumed to be a proposal to serve the Urbanized Area rather than the proposed community. In the case of an AM station, the determination of whether a proposed facility "could be modified" to cover 50 percent or more of an Urbanized Area will be made based on the applicant's certification in the Section 307(b) showing that there could be no rule-compliant minor modifications to the proposal, based on the antenna configuration or site, and spectrum availability as of the filing date, that could cause the station to place a principal community contour over 50 percent or more of an Urbanized Area. To the extent the applicant wishes to rebut the Urbanized Area service presumption, the Section 307(b) showing must include a compelling showing (a) that the proposed community is truly independent from the Urbanized Area; (b) of the community's specific need for an outlet of local expression separate from the Urbanized Area; and (c) the ability of the proposed station to provide that outlet.

In the case of applicants for new AM stations making a showing under Priority (4), other public interest matters, an applicant that can demonstrate that its proposed station would provide third, fourth, or fifth reception service to at least 25 percent of the population in the proposed primary service area, where the proposed community of license has two or fewer transmission services, may receive a dispositive Section 307(b) preference under Priority (4). An applicant for a new AM station that cannot demonstrate that it would provide the third, fourth, or fifth reception service to the required population at a community with two or fewer transmission services may also, under Priority (4), calculate a "service value index" as set forth in the case of Greenup, Kentucky and Athens, Ohio, Report and Order, 2 FCC Rcd 4319 (MMB 1987). If the applicant can demonstrate a 30 percent or greater difference in service value index between its proposal and the next highest ranking proposal, it can receive a dispositive Section 307(b) preference under Priority (4). Except under these circumstances, dispositive Section 307(b) preferences will not be granted under Priority (4) to applicants for new AM stations. The Commission specifically stated that these modified allotment and assignment procedures will not apply to pending applications for new AM stations and major modifications to AM facilities filed during the 2004 AM Auction 84 filing window.

OMB Control Number: 3060–0980.

Title: 47 CFR Section 76.66, Implementation of the Satellite Home Viewer Improvement Act of 1999: Local Broadcast Signal Carriage Issues and Retransmission Consent Issues.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 10,280 respondents; 11,938 responses.

Estimated Time per Response: 1 to 5 hours.

Frequency of Response: Third party disclosure requirement; On occasion reporting requirement, Every three years reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in Sections 325, 338, 339 and 340 of the Communications Act of 1934, as amended.

Total Annual Burden: 12,146 hours.

Total Annual Cost: 24,000.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: On March 27, 2008 the Commission released a Second Report and Order, Memorandum Opinion and Order, and Second Further Notice of Proposed Rulemaking Carriage of Digital Television Broadcast Signals: Amendment to part 76 of the Commission's Rules; Implementation of the Satellite Home Viewer Improvement Act of 1999: Local Broadcast Signal Carriage Issues and Retransmission Consent Issues, FCC 08–86, CS Docket 00–96. The Commission amended the rules to require satellite carriers to carry digital-only stations upon request in markets in which they are providing any local-into-local service pursuant to the statutory copyright license, and to require carriage of all high definition ("HD") signals in a market in which any station's signals are carried in HD.

The information collection requirements that have been approved by the Office of Management and Budget (OMB) and have not changed since last approved are as follows:

47 CFR Section 76.66(b)(1) states each satellite carrier providing, under section 122 of title 17, United States Code, secondary transmissions to subscribers located within the local market of a television broadcast station of a primary transmission made by that station, shall carry upon request the signals of all television broadcast stations located within that local market, subject to section 325(b) of title 47, United States Code, and other paragraphs in this section. Satellite carriers are required to carry digital-only stations upon request in markets in which the satellite carrier is providing any local-into-local service pursuant to the statutory copyright license.

47 CFR Section 76.66(b)(2) requires a satellite carrier that offers multichannel video programming distribution service in the United States to more than 5,000,000 subscribers shall, no later than December 8, 2005, carry upon request the signal originating as an analog signal of each television broadcast station that is located in a local market in Alaska or Hawaii; and shall, no later than June 8, 2007, carry upon request the signals originating as digital signals of each television broadcast station that is located in a local market in Alaska or Hawaii. Such satellite carrier is not required to carry the signal originating as analog after commencing carriage of digital signals on June 8, 2007. Carriage of signals originating as digital signals of each television broadcast station that is located in a local market in Alaska or Hawaii shall include the entire free over-the-air signal, including multicast and high definition digital signals.

47 CFR Section 76.66(c)(3) requires that a commercial television station notify a satellite carrier in writing whether it elects to be carried pursuant to retransmission consent or mandatory consent in accordance with the established election cycle.

47 CFR Section 76.66(c)(5) requires that a noncommercial television station must request carriage by notifying a satellite carrier in writing in accordance with the established election cycle.

47 CFR Section 76.66(c)(6) requires a commercial television broadcast station located in a local market in a noncontiguous State to make its retransmission consent-mandatory carriage election by October 1, 2005, for carriage of its signals that originate as analog signals for carriage commencing on December 8, 2005 and ending on December 31, 2008, and by April 1, 2007 for its signals that originate as digital signals for carriage commencing on June 8, 2007 and ending on December 31, 2008. For analog and digital signal carriage cycles commencing after December 31, 2008, such stations shall follow the election cycle in 47 CFR Section 76.66(c)(2) and 47 CFR Section 76.66(c)(4). A noncommercial television broadcast station located in a local market in Alaska or Hawaii must request carriage by October 1, 2005, for carriage of its signals that originate as an analog signal for carriage commencing on December 8, 2005 and ending on December 31, 2008, and by April 1, 2007 for its signals that originate as digital signals for carriage commencing on June 8, 2007 and ending on December 31, 2008. Moreover, Section 76.66(c) requires a commercial television station located in a local market in a noncontiguous State to provide notification to a satellite carrier whether it elects to be carried pursuant to retransmission consent or mandatory consent.

47 CFR Section 76.66(d)(1)(ii) states an election request made by a television station must be in writing and sent to the satellite carrier's principal place of business, by certified mail, return receipt requested.

47 CFR Section 76.66(d)(1)(iii) states a television station's written notification shall include the:

(A) Station's call sign;

(B) Name of the appropriate station contact person;

(C) Station's address for purposes of receiving official correspondence;

(D) Station's community of license;

(E) Station's DMA assignment; and

(F) For commercial television stations, its election of mandatory carriage or retransmission consent.

47 CFR Section 76.66(d)(1)(iv) Within 30 days of receiving a television station's carriage request, a satellite carrier shall notify in writing: (A) Those local television stations it will not carry, along with the reasons for such a decision; and (B) those local television stations it intends to carry.

47 CFR Section 76.66(d)(2)(i) states a new satellite carrier or a satellite carrier providing local service in a market for the first time after July 1, 2001, shall inform each television broadcast station licensee within any local market in which a satellite carrier proposes to commence carriage of signals of stations from that market, not later than 60 days prior to the commencement of such carriage.

(A) Of the carrier's intention to launch local-into-local service under this section in a local market, the identity of that local market, and the location of the carrier's proposed local receive facility for that local market;

(B) Of the right of such licensee to elect carriage under this section or grant retransmission consent under section 325(b);

(C) That such licensee has 30 days from the date of the receipt of such notice to make such election; and

(D) That failure to make such election will result in the loss of the right to demand carriage under this section for the remainder of the 3-year cycle of carriage under section 325.

47 CFR Section 76.66(d)(2)(ii) states satellite carriers shall transmit the notices required by paragraph (d)(2)(i) of this section via certified mail to the address for such television station licensee listed in the consolidated database system maintained by the Commission.

47 CFR Section 76.66(d)(2)(iii) requires a satellite carrier with more than five million subscribers to provide a notice as required by 47 CFR Section 76.66(d)(2)(i) and 47 CFR Section 76.66(d)(2)(ii) to each television broadcast station located in a local market in a noncontiguous State, not later than September 1, 2005 with respect to analog signals and a notice not later than April 1, 2007 with respect to digital signals; provided, however, that the notice shall also describe the carriage requirements pursuant to Section 338(a)(4) of Title 47, United States Code, and 47 CFR Section 76.66(b)(2).

47 CFR Section 76.66(d)(2)(iv) requires that a satellite carrier shall commence carriage of a local station by

the later of 90 days from receipt of an election of mandatory carriage or upon commencing local-into-local service in the new television market.

47 CFR Section 76.66(d)(2)(v) states within 30 days of receiving a local television station's election of mandatory carriage in a new television market, a satellite carrier shall notify in writing: Those local television stations it will not carry, along with the reasons for such decision, and those local television stations it intends to carry.

47 CFR Section 76.66(d)(2)(vi) requires satellite carriers to notify all local stations in a market of their intent to launch HD carry-one, carry-all in that market at least 60 days before commencing such carriage.

47 CFR Section 76.66(d)(3)(ii) states a new television station shall make its election request, in writing, sent to the satellite carrier's principal place of business by certified mail, return receipt requested, between 60 days prior to commencing broadcasting and 30 days after commencing broadcasting. This written notification shall include the information required by paragraph (d)(1)(iii) of this section.

47 CFR Section 76.66(d)(3)(iv) states within 30 days of receiving a new television station's election of mandatory carriage, a satellite carrier shall notify the station in writing that it will not carry the station, along with the reasons for such decision, or that it intends to carry the station.

47 CFR Section 76.66(d)(5)(i) states beginning with the election cycle described in § 76.66(c)(2), the retransmission of significantly viewed signals pursuant to § 76.54 by a satellite carrier that provides local-into-local service is subject to providing the notifications to stations in the market pursuant to paragraphs (d)(5)(i)(A) and (B) of this section, unless the satellite carrier was retransmitting such signals as of the date these notifications were due.

(A) In any local market in which a satellite carrier provided local-into-local service on December 8, 2004, at least 60 days prior to any date on which a station must make an election under paragraph (c) of this section, identify each affiliate of the same television network that the carrier reserves the right to retransmit into that station's local market during the next election cycle and the communities into which the satellite carrier reserves the right to make such retransmissions;

(B) In any local market in which a satellite carrier commences local-into-local service after December 8, 2004, at least 60 days prior to the commencement of service in that market, and thereafter at least 60 days prior to any date on which the station must thereafter make an election under § 76.66(c), identify each affiliate of the same television network that the carrier reserves the right to retransmit into that station's local market during the next election cycle.

47 CFR Section 76.66(f)(3) states except as provided in 76.66(d)(2), a satellite carrier providing local-into-local service must notify local television stations of the location of the receive facility by June 1, 2001 for the first election cycle and at least 120 days prior to the commencement of all election cycles thereafter.

47 CFR Section 76.66(f)(4) states a satellite carrier may relocate its local receive facility at the commencement of each election cycle. A satellite carrier is also permitted to relocate its local receive facility during the course of an election cycle, if it bears the signal delivery costs of the television stations affected by such a move. A satellite carrier relocating its local receive facility must provide 60 days notice to all local television stations carried in the affected television market.

47 CFR Section 76.66(h)(5) states a satellite carrier shall provide notice to its subscribers, and to the affected television station, whenever it adds or deletes a station's signal in a particular local market pursuant to this paragraph.

47 CFR 76.66(m)(1) states whenever a local television broadcast station believes that a satellite carrier has failed to meet its obligations under this section, such station shall notify the carrier, in writing, of the alleged failure and identify its reasons for believing that the satellite carrier failed to comply with such obligations.

47 CFR 76.66(m)(2) states the satellite carrier shall, within 30 days after such written notification, respond in writing to such notification and comply with such obligations or state its reasons for believing that it is in compliance with such obligations.

47 CFR 76.66(m)(3) states a local television broadcast station that disputes a response by a satellite carrier that it is in compliance with such obligations may obtain review of such denial or response by filing a complaint with the Commission, in accordance with 76.7 of title 47, Code of Federal Regulations. Such complaint shall allege the manner in which such satellite carrier has failed to meet its obligations and the basis for such allegations.

47 CFR 76.66(m)(4) states the satellite carrier against which a complaint is filed is permitted to present data and arguments to establish that there has been no failure to meet its obligations under this section.

Non-rule requirement: Satellite carriers must immediately commence carriage of the digital signal of a television station that ceases analog broadcasting prior to the February 17, 2009 transition deadline provided that the broadcaster notifies the satellite carrier on or before October 1, 2008 of the date on which they anticipate termination of their analog signal.

Federal Communications Commission.

Bulah P. Wheeler,

Deputy Manager, Office of the Secretary, Office of Managing Director.

[FR Doc. 2011–13021 Filed 5–25–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: The Federal Communications Commission (FCC), as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act (PRA) of 1995. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before July 25, 2011. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Paul Laurenzano, FCC, via e-mail *PRA@fcc.gov* and to *Paul.Laurenzano@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Paul Laurenzano at (202) 418–1359.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1081.

Title: Telecommunications Carriers Eligible To Receive Universal Service Support.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents and Responses: 1529 respondents; 1529 responses.

Estimated Time per Response: 0.25–40 hours.

Obligation To Respond: Required to obtain or retain benefits, 47 CFR 54.202, 54.209.

Frequency of Response: One-time and annual reporting requirements; recordkeeping requirements.

Total Annual Burden: 1,356 hours.

Total Annual Cost: No cost.

Privacy Act Impact Assessment: No impact(s).

Nature of Extent of Confidentiality: If respondents submit information which respondents believe is confidential, respondents may request confidential treatment of such information pursuant to section 0.459 of the Commission's rules, 47 CFR 0.459.

Needs and Uses: Designation as an Eligible Telecommunications Carrier (ETC) makes a telecommunications carrier eligible to participate in the Universal Service Fund's high-cost and low-income programs, which support the extension of telecommunications services to underserved rural and low-income communities. In the absence of this information collection, the Commission's ability to oversee the use of Federal universal service funds and to combat waste, fraud, and abuse in the use of Federal funds would be compromised. The Commission's rules for ETCs require the collection of the following information as stated in paragraphs a–c:

a. ETC Designation Application. Rule 54.202 requires carriers seeking designation from the Commission to submit an application that certifies that the carrier will reasonably provide service to customers in their designated service area, 47 CFR 54.202(a)(1)(i), includes a five-year plan that describes network improvements or why such improvements are unnecessary, § 54.202(a)(1)(ii), demonstrates the carrier's ability to remain functional in emergency situations, § 54.202(a)(2), demonstrates the carrier's commitment to consumer protection and service quality standards, § 54.202(a)(3), demonstrates that carrier offers a local usage plan comparable to the one offered by the incumbent telephone company, § 54.202(a)(4), and certifies that the Commission may require the carrier to provide equal access to other long distance carriers, § 54.202(a)(5). If the carrier is seeking designation on Tribal lands, the carrier must also submit a copy of its application to the Tribal government and Tribal regulatory authority. § 54.202(d).

b. ETC Annual Reporting. Rule 54.209 requires Federally designated ETCs to submit each year an annual report on October 1 that parallels many of the requirements of an application. The annual report must include a progress report on the ETC's five-year plan, § 54.209(a)(1), detailed outage information, § 54.209(a)(2), the number of unfulfilled requests for service from potential customers within its service areas, § 54.209(a)(3), the number of complaints per 1,000 handsets or lines, § 54.209(a)(4), certification that the ETC is complying with applicable service quality standards and consumer protection rules, § 54.209(a)(5), certification that the ETC is able to function in emergency situations, § 54.209(a)(6), certification that the ETC is offering a local usage plan comparable to that offered by the incumbent LEC in the relevant service areas, § 54.209(a)(7), and certification that the Commission may require the carrier to provide equal access to other long distance carriers, § 54.209(a)(8).

c. ETC Recordkeeping. Rule 54.202(e) requires all ETCs to keep for a period of at least five years all records required to demonstrate to auditors that the support received was consistent with the universal service high-cost program rules.

Federal Communications Commission.

Bulah P. Wheeler,

Deputy Manager, Office of the Secretary, Office of the Managing Director.

[FR Doc. 2011–13020 Filed 5–25–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501–3520. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, and (e) ways to further reduce the information collection burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a currently valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before July 25, 2011. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202–395–5167 or via e-mail to *Nicholas_A._Fraser@omb.eop.gov* and to the Federal Communications Commission via e-mail to *PRA@fcc.gov* and *Paul.Laurenzano@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information, contact Paul Laurenzano on (202) 418–1359.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0989.

Title: Sections 63.01, 63.03, 63.04, Procedures for Applicants Requiring Section 214 Authorization for Domestic Interstate Transmission Lines Acquired Through Corporate Control.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents of Responses: 92 respondents; 92 responses.

Estimated Time per Response: 1.5–12 hours.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Mandatory.

Total Annual Burden: 1,031 hours.

Annual Cost Burden: $86,275.

Privacy Act Impact Assessment: No impacts.

Nature and Extent of Confidentiality: There is no need for confidentiality. The FCC is not requiring applicants to submit confidential information to the Commission. If applicants want to request confidential treatment of the documents they submit to Commission, they may do so under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: This collection will be submitted as an extension (no change in reporting requirements) after this 60 day comment period to Office of Management and Budget (OMB) in order to obtain the full three year clearance. A Report and Order, FCC 02–78, adopted and released in March 2002 (Order), set forth the procedures for common carriers requiring authorization under section 214 of the Communications Act of 1934, as amended, to acquire domestic interstate transmission lines through a transfer of control. Under section 214 of the Act, carriers must obtain FCC approval before constructing, acquiring, or operating an interstate transmission line. Acquisitions involving interstate common carriers require affirmative action by the Commission before the acquisition can occur. This information collection contains filing procedures for domestic transfer of control applications under sections 63.03 and 63.04. (a) Section 63.03 and 63.04 requires domestic section 214 applications involving domestic transfers of control, at a minimum, should specify: (1) The name, address and telephone number of each applicant; (2) the government, state, or territory under the laws of which each corporate or partnership applicant is organized; (3) the name, title, post office address, and telephone number of the officer or contact point, such as legal counsel, to whom correspondence concerning the application is to be addressed; (4) the name, address, citizenship and principal business of any person or entity that directly or indirectly owns at least ten percent of the equity of the applicant, and the percentage of equity owned by each of those entities (to the nearest one percent); (5) certification pursuant to 47 CFR 1.2001 that no party to the application is subject to a denial of Federal benefits pursuant to section 5301 of the Anti-Drug Abuse Act of 1988; (6) a description of the transaction; (7) a description of the geographic areas in which the transferor and transferee (and their affiliates) offer domestic telecommunications services, and what services are provided in each area; (8) a statement as to how the application fits into one or more of the presumptive streamlined categories in section 63.03 or why it is otherwise appropriate for streamlined treatment; (9) identification of all other Commission applications related to the same transaction; (10) a statement of whether the applicants are requesting special consideration because either party to the transaction is facing imminent business failure; (11) identification of any separately filed waiver request being sought in conjunction with the transaction; and (12) a statement showing how grant of the application will serve the public interest, convenience, and necessity, including any additional information that may be necessary to show the effect of the proposed transaction on competition in domestic markets. Where an applicant wishes to file a joint international section 214 transfer of control application and domestic section 214 transfer of control application, the applicant must submit information that satisfies the requirements of 47 CFR 63.18. In the attachment to the international application, the applicant must submit information described in 47 CFR 63.04(a)(6. When the Commission, acting through the Wireline Competition Bureau, determines that applicants have submitted a complete application qualifying for streamlined treatment, it shall issue a public notice commencing a 30-day review period to consider whether the transaction serves the public interest, convenience and necessity. Parties will have 14 days to file any comments on the proposed transaction, and applicants will be given 7 days to respond. (b) Applicants are not required to file post-consummation notices of pro forma transactions, except that a post transaction notice must be filed with the Commission within 30 days of a pro forma transfer to a bankruptcy trustee or a debtor-in-possession. The notification can be in the form of a letter (in duplicate to the Secretary, Federal Communications Commission). The letter or other form of notification must also contain the information listed in sections (a)(1). A single letter may be filed for more than one such transfer of control. The information will be used by the Commission to ensure that applicants comply with the requirements of 47 U.S.C. 214.

Federal Communications Commission.

Bulah P. Wheeler,

Deputy Manager, Office of the Secretary, Office of Managing Director.

[FR Doc. 2011–13018 Filed 5–25–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: The Federal Communications Commission (FCC), as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act (PRA) of 1995. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before July 25, 2011. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Paul Laurenzano, FCC, via e-mail *PRA@fcc.gov* and to *Paul.Laurenzano@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Paul Laurenzano at (202) 418–1359.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0395.

Title: The ARMIS USOA Report (ARMIS Report 43–02); the ARMIS Service Quality Report (ARMIS Report 43–05); and the ARMIS Infrastructure Report (ARMIS Report 43–07).

Form Number: FCC Reports 43–02, 43–05 and 43–07.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents and Responses: 48 respondents; 63 responses.

Estimated Time per Response: 322.5 hours.

Obligation to Respond: Mandatory—The ARMIS reporting requirements were established by the Commission in 1987 to facilitate the timely and efficient analysis of carrier operating costs and rates of return, to provide an improved basis for audits and other oversight functions, and to enhance the Commission's ability to quantify the effects of alternative policy proposals. Additional ARMIS Reports were added in 1991 and 1992. Incumbent LECs must submit the ARMIS reports to the Commission annually on or before April 1. See Reporting Requirements of Certain Class A and Tier I Telephone Companies (Parts 31, 43, 67 and 69 of the FCC's Rules), Order, 2 FCC Rcd 5770 (1987).

Frequency of Response: Annual reporting requirements.

Total Annual Burden: 20,317.5 hours.

Total Annual Cost: No cost.

Privacy Act Impact Assessment: No impacts.

Nature of Extent of Confidentiality: This collection addresses information of a confidential nature for two of these reports. Respondents have requested and filed for confidential treatment of information they believe should be withheld from public inspection under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: FCC Report 43–02 is prescribed for each incumbent local exchange carrier with annual operating revenues for the preceding year equal to or above the indexed revenue threshold. The report collects the operating results of the carrier's total activities for every account in the Uniform System of Accounts at the operating company level, as specified in Part 32 of the Commission's Rules. There are no changes to the ARMIS Report 43–02.

ARMIS Report 43–05 is prescribed for every mandatory price cap ILEC and local exchange carriers electing the incentive regulation plan. This report is designed to capture trends in service quality under price cap regulation. It provides service quality information in the areas of interexchange access service installation and repair intervals, local service installation and repair intervals, trunk blockage, and total switch downtime for price cap companies. We are adjusting the number of respondents submitting the 43–05 from 14 to 15 to reflect a carrier that was not included in the prior approval process.

ARMIS Report 43–07 is prescribed for every ILEC for whom price cap regulation is mandatory. The report is designed to capture trends in telephone industry infrastructure development under price cap regulation. It provides switch deployment and capabilities data. The information is also part of the data necessary to support the Commission's audit and other oversight functions. The data provide the necessary detail to enable the Commission to fulfill its regulatory responsibility. There are no changes to the ARMIS Report 43–07.

Federal Communications Commission.

Bulah P. Wheeler,

Deputy Manager, Office of the Secretary, Office of Managing Director.

[FR Doc. 2011–13016 Filed 5–25–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Availability of the Federal Communications Commission FY 2010 Service Contract Inventory

AGENCY: Federal Communications Commission.

ACTION: Notice of public availability of FY 2010 Service Contract Inventory.

SUMMARY: The Federal Communications Commission is publishing this notice to advise the public of the availability of the FY 2010 Service Contract Inventory as required by Section 743 of Division C of the Consolidated Appropriations Act of 2010 (Pub. L. 111–117). This inventory provides information on service contract actions over $25,000 that were made in FY 2010. The information is organized by function to show how contracted resources are distributed throughout the agency. The inventory has been developed in accordance with guidance issued on November 5, 2010 by the Office of Management and Budget's Office of Federal Procurement Policy (OFPP). OFPP's guidance is available at: *http://www.whitehouse.gov/sites/default/files/omb/procurement/memo/service-contract-inventories-guidance-11052010.pdf.*

The Federal Communications Commission has posted its inventory and a summary of the inventory on the Federal Communications Commission's Web site at the following link: *http://www.fcc.gov/encyclopedia/service-contract-inventory-2010.*

FOR FURTHER INFORMATION CONTACT: Questions regarding the service contract inventory should be directed to Mr. Arnett Rogiers, Deputy Chief of Contracts & Purchasing Center, Administrative Operations, Office of the Managing Director at 202–418–1973 or *Arnett.Rogiers@fcc.gov.*

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2011–13000 Filed 5–25–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Federal Advisory Committee Act; Technological Advisory Council

AGENCY: Federal Communications Commission.

ACTION: Notice of intent to reestablish.

SUMMARY: In accordance with the Federal Advisory Committee Act, the purpose of this notice is to announce that a Federal Advisory Committee, known as the "Technological Advisory Council" (hereinafter the "TAC") is being reestablished.

ADDRESSES: Federal Communications Commission, Attn: Walter E. Johnston, Chief, Electromagnetic Compatibility Division, 445 12th Street, SW., Room 7–A224, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Walter E. Johnston, Chief Technologist, Federal Communications Commission, 445 12th Street, SW., Room 7–A224, Washington, DC 20554. Telephone: (202) 418–2406, e-mail: *walter.johnston@fcc.gov.*

SUPPLEMENTARY INFORMATION: The Chairman of the Federal

Communications Commission has determined that the reestablishment of the Council is necessary and in the public interest in connection with the performance of duties imposed on the Federal Communications Commission (FCC) by law. The Committee Management Secretariat, General Services Administration concurs with the reestablishment of the Council. The purpose of the TAC is to provide technical advice to the Federal Communications Commission and to make recommendations on the issues and questions presented to it by the FCC. The TAC will address questions referred to it by the FCC Chairman, the FCC Chief Technologist, the Chief of the FCC Office of Engineering and Technology, or the TAC Designated Federal Officer. The questions referred to the TAC will be directed to technological and technical issues in the field of communications. The duties of the TAC will be to gather data and information, perform analyses, and prepare reports and presentations to respond to the questions referred to it.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2011–13004 Filed 5–25–11; 8:45 am]

BILLING CODE 6712–01–P

GENERAL SERVICES ADMINISTRATION

[VSI–Notice 2011–01; Docket 2011–0005; Sequence 11]

Notice Pursuant to Executive Order 12600 of Receipt of Freedom of Information Act (FOIA) Requests for Access to the Central Contractor Registration (CCR) Data

AGENCY: Office of Governmentwide Policy, General Services Administration.

ACTION: Notice.

SUMMARY: This notice replaces the notice VSI–Notice 2011–01; Notice Pursuant to Executive Order 12600 of Receipt of Freedom of Information Act (FOIA) Requests for Access to the Central Contractor Registration (CCR) Data, published on May 16, 2011. It provides submitters notice pursuant to Executive Order 12600 that the General Services Administration, Office of Governmentwide Policy, Acquisition Systems Division (ASD) has received several FOIA requests for certain data elements within the Central Contractor Registration (CCR) database. This notice describes each data element contained in CCR and its exemption status under FOIA. The non-exempt data elements are packaged in a monthly CCR FOIA extract available on Acquisition.gov (*http://www.acquisition.gov*). The exempt data elements are not made public as part of the CCR FOIA extract.

However, certain data elements that are exempt for CCR FOIA requests may be displayed publicly in other Federal systems after they are associated with a Federal award as required by law. For instance, CCR data elements 250–254 address Executive Compensation as required under section 2 of the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109–282), as amended by section 6202 of the Government Funding Transparency Act of 2008 (Pub. L. 110–252). While collected in CCR as part of the registrant's profile, the Executive Compensation responses are not displayed until they are associated with an eligible Federal award at USAspending.gov (*http://www.usaspending.gov*), nor are they releasable under CCR FOIA prior to association with an eligible Federal award and subsequent display on USAspending.gov. In addition, CCR data elements 255–260 address Proceedings information in accordance with FAR clause 52.209–7 (version dated January 2011). While collected in CCR as part of the registrant's profile (in accordance with FAR 52.209–7(d)), the Proceedings information is only displayed in association with a record in the Federal Awardee Performance and Integrity Information System (FAPIIS) and is not releasable under CCR FOIA.

The following information applies to CCR data fields 255 through 260, dealing with the Proceedings section of the CCR registration, which are marked with "*":

Any information entered in data fields 255 to 260 before April 15, 2011, will be handled in accordance with the Freedom of Information Act procedures at 5 U.S.C 552. Information posted on or after April 15, 2011, will be available to the public through FAPIIS, as required by Section 3010 of Public Law 111–212 (see 41 U.S.C. 417b, as recodified, 41 U.S.C. 2313) and in accordance with FAR clause 52.209–9 (version dated January 2011).

Federal contractors must not post information to data fields 255 to 260 under former FAR clause 52.209–8 (version dated April 2010) on or after April 15, 2011. Any contractors with a contract containing clause 52.209–8 (version dated April 2010) that requires update of information on or after April 15, 2011, should contact their contracting officer immediately to discuss a modification. Contracting officers are required to bilaterally modify existing contracts (including indefinite-delivery indefinite-quantity contracts) that contain the FAR clause 52.209–8 (version dated April 2010) if a six-month update is due on or after April 15, 2011. The modification shall replace FAR clause 52.209–8 (version dated April 2010) with the new FAR clause 52.209–9 (version dated January 2011).

DATES: Comments must be received on or before June 27, 2011. Submit comments to the addresses shown below.

ADDRESSES: Submit comments identified by VSI–Notice 2011–01, by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inputting "VSI–Notice 2011–01" under the heading "Enter Keyword or ID" and selecting "Search". Select the link "Submit a Comment" that corresponds with "VSI–Notice 2011–01". Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "VSI–Notice 2011–01" on your attached document.
- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1275 First St, NE., Washington, DC 20417, ATTN: Hada Flowers/VSI–Notice 2011–01.

Instructions: Please submit comments only and cite VSI–Notice 2011–01, 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: Meredith Whitehead at (703) 605–9466.

SUPPLEMENTARY INFORMATION:

This notice replaces the notice published in the **Federal Register** at 76 FR 28228, May 16, 2011. The CCR is an e-Gov initiative within the Acquisition Systems Division. The primary objective of the CCR is to provide a Web-based application that provides a single source of vendor information in support of the contract award and the electronic payment process of the Federal government. The CCR is also a registration system for grants and assistance awards. The CCR has 260 data fields, some of which are exempt from disclosure pursuant to Exemption 4 of the Freedom of information Act (FOIA), 5 U.S.C. 552(b)(4).

The following table contains a description of these data fields and their exemption status:

FOIA REVIEW OF THE CCR DATA FIELDS

Data field	Exempt status	Public comments
1) CAGE CODE	Not exempt under the FOIA.	
2) CCR EXTRACT CODE	Not exempt under the FOIA.	
3) REGISTRATION DATE	Not exempt under the FOIA.	
4) RENEWAL DATE	Not exempt under the FOIA.	
5) LEGAL BUS NAME	Not exempt under the FOIA.	
6) DBA NAME	Not exempt under the FOIA.	
7) COMPANY DIVISION	Not exempt under the FOIA.	
8) DIVISION NUMBER	Not exempt under the FOIA.	
9) ST ADD (1)	Not exempt under the FOIA.	
10) ST ADD (2)	Not exempt under the FOIA.	
11) CITY	Not exempt under the FOIA.	
12) STATE OR PROVINCE	Not exempt under the FOIA.	
13) POSTAL CODE	Not exempt under the FOIA.	
14) COUNTRY CODE	Not exempt under the FOIA.	
15) BUS START DATE	Not exempt under the FOIA.	
16) FISCAL YEAR END CLOSE DATE	Not exempt under the FOIA.	
17) CORPORATE URL	Not exempt under the FOIA.	
18) ORGANIZATIONAL TYPE	Not exempt under the FOIA.	
19) STATE OF INC	Not exempt under the FOIA.	
20) COUNTRY OF INC	Not exempt under the FOIA.	
21) BUS TYPES	Not exempt under the FOIA.	
22) BUS TYPE COUNTER	Not exempt under the FOIA.	
23) SIC CODE	Not exempt under the FOIA.	
24) SIC CODE COUNTER	Not exempt under the FOIA.	
25) NAICS CODE	Not exempt under the FOIA.	
26) NAICS CODE COUNTER	Not exempt under the FOIA.	
27) FSC CODE	Not exempt under the FOIA.	
28) FSC CODE COUNTER	Not exempt under the FOIA.	
29) PSC CODE	Not exempt under the FOIA.	
30) PSC CODE COUNTER	Not exempt under the FOIA.	
31) CREDIT CARD (y/n)	Not exempt under the FOIA.	
32) CORRESPONDENCE FLAG	Not exempt under the FOIA.	
33) MAILING ADD POC (FE)	Not exempt under the FOIA.	
34) MAILING ADD ST ADD (1)	Not exempt under the FOIA.	
35) MAILING ADD ST ADD (2)	Not exempt under the FOIA.	
36) MAILING ADD CITY	Not exempt under the FOIA.	
37) MAILING ADD POSTAL CODE	Not exempt under the FOIA.	
38) MAILING ADD COUNTRY CODE	Not exempt under the FOIA.	
39) MAILING ADD STATE/PROVINCE	Not exempt under the FOIA.	
40) PREVIOUS BUS POC (B3)	Not exempt under the FOIA.	
41) PREVIOUS BUS ST ADD (1)	Not exempt under the FOIA.	
42) PREVIOUS BUS ST ADD (2)	Not exempt under the FOIA.	
43) PREVIOUS BUS CITY	Not exempt under the FOIA.	
44) PREVIOUS BUS POSTAL CODE	Not exempt under the FOIA.	
45) PREVIOUS BUS COUNTRY CODE	Not exempt under the FOIA.	
46) PREVIOUS BUS STATE/PROVINCE	Not exempt under the FOIA.	
47) GOVT BUS POC (60)	Not exempt under the FOIA.	
48) GOVT BUS ST ADD (1)	Not exempt under the FOIA.	
49) GOVT BUS ST ADD (2)	Not exempt under the FOIA.	
50) GOVT BUS CITY	Not exempt under the FOIA.	
51) GOVT BUS POSTAL CODE	Not exempt under the FOIA.	
52) GOVT BUS COUNTRY CODE	Not exempt under the FOIA.	
53) GOVT BUS STATE OR PROVINCE	Not exempt under the FOIA.	
54) GOVT BUS U.S. PHONE	Not exempt under the FOIA.	
55) GOVT BUS U.S. PHONE EXT	Not exempt under the FOIA.	
56) GOVT BUS NON-U.S. PHONE	Not exempt under the FOIA.	
57) GOVT BUS FAX U.S. ONLY	Not exempt under the FOIA.	
58) GOVT BUS E-MAIL	Not exempt under the FOIA.	
59) ALT GOVT BUS POC (60)	Not exempt under the FOIA.	
60) ALT GOVT BUS ST ADD (1)	Not exempt under the FOIA.	
61) ALT GOVT BUS ST ADD (2)	Not exempt under the FOIA.	
62) ALT GOVT BUS CITY	Not exempt under the FOIA.	
63) ALT GOVT BUS POSTAL CODE	Not exempt under the FOIA.	
64) ALT GOVT BUS COUNTRY CODE	Not exempt under the FOIA.	
65) ALT GOVT BUS STATE OR PROVINCE	Not exempt under the FOIA.	
66) ALT GOVT BUS U.S. PHONE	Not exempt under the FOIA.	
67) ALT GOVT BUS U.S. PHONE EXT	Not exempt under the FOIA.	
68) ALT GOVT BUS NON-U.S. PHONE	Not exempt under the FOIA.	

FOIA REVIEW OF THE CCR DATA FIELDS—Continued

Data field	Exempt status	Public comments
69) ALT GOVT BUS FAX U.S. ONLY	Not exempt under the FOIA.	
70) ALT GOVT BUS E-MAIL	Not exempt under the FOIA.	
71) PAST PERF POC (R2)	Not exempt under the FOIA.	
72) PAST PERF ST ADD (1)	Not exempt under the FOIA.	
73) PAST PERF ST ADD (2)	Not exempt under the FOIA.	
74) PAST PERF CITY	Not exempt under the FOIA.	
75) PAST PERF POSTAL CODE	Not exempt under the FOIA.	
76) PAST PERF COUNTRY CODE	Not exempt under the FOIA.	
77) PAST PERF STATE OR PROVINCE	Not exempt under the FOIA.	
78) PAST PERF U.S. PHONE	Not exempt under the FOIA.	
79) PAST PERF U.S. PHONE EXT	Not exempt under the FOIA.	
80) PAST PERF NON-U.S. PHONE	Not exempt under the FOIA.	
81) PAST PERF FAX U.S. ONLY	Not exempt under the FOIA.	
82) PAST PERF E-MAIL	Not exempt under the FOIA.	
83) ALT PAST PERF POC (R2)	Not exempt under the FOIA.	
84) ALT PAST PERF ST ADD (1)	Not exempt under the FOIA.	
85) ALT PAST PERF ST ADD (2)	Not exempt under the FOIA.	
86) ALT PAST PERF CITY	Not exempt under the FOIA.	
87) ALT PAST PERF POSTAL CODE	Not exempt under the FOIA.	
88) ALT PAST PERF COUNTRY CODE	Not exempt under the FOIA.	
89) ALT PAST PERF STATE OR PROVINCE	Not exempt under the FOIA.	
90) ALT PAST PERF U.S. PHONE	Not exempt under the FOIA.	
91) ALT PAST PERF U.S. PHONE EXT	Not exempt under the FOIA.	
92) ALT PAST PERF NON-U.S. PHONE	Not exempt under the FOIA.	
93) ALT PAST PERF FAX U.S. ONLY	Not exempt under the FOIA.	
94) ALT PAST PERF E-MAIL	Not exempt under the FOIA.	
95) ELEC BUS POC (ZR)	Not exempt under the FOIA.	
96) ELEC BUS ST ADD (1)	Not exempt under the FOIA.	
97) ELEC BUS ST ADD (2)	Not exempt under the FOIA.	
98) ELEC BUS CITY	Not exempt under the FOIA.	
99) ELEC BUS POSTAL CODE	Not exempt under the FOIA.	
100) ELEC BUS COUNTRY CODE	Not exempt under the FOIA.	
101) ELEC BUS STATE OR PROVINCE	Not exempt under the FOIA.	
102) ELEC BUS U.S. PHONE	Not exempt under the FOIA.	
103) ELEC BUS U.S. PHONE EXT	Not exempt under the FOIA.	
104) ELEC BUS NON-U.S. PHONE	Not exempt under the FOIA.	
105) ELEC BUS FAX U.S. ONLY	Not exempt under the FOIA.	
106) ELEC BUS E-MAIL	Not exempt under the FOIA.	
107) ALT ELEC BUS POC (ZR)	Not exempt under the FOIA.	
108) ALT ELEC BUS ST ADD (1)	Not exempt under the FOIA.	
109) ALT ELEC BUS ST ADD (2)	Not exempt under the FOIA.	
110) ALT ELEC BUS CITY	Not exempt under the FOIA.	
111) ALT ELEC BUS POSTAL CODE	Not exempt under the FOIA.	
112) ALT ELEC BUS COUNTRY CODE	Not exempt under the FOIA.	
113) ALT ELEC BUS STATE OR PROVINCE	Not exempt under the FOIA.	
114) ALT ELEC BUS U.S. PHONE	Not exempt under the FOIA.	
115) ALT ELEC BUS U.S. PHONE EXT	Not exempt under the FOIA.	
116) ALT ELEC BUS NON-U.S. PHONE	Not exempt under the FOIA.	
117) ALT ELEC BUS FAX U.S. ONLY	Not exempt under the FOIA.	
118) ALT ELEC BUS E-MAIL	Not exempt under the FOIA.	
119) CERTIFIER POC (CE)	Not exempt under the FOIA.	
120) CERTIFIER U.S. PHONE	Not exempt under the FOIA.	
121) CERTIFIER U.S. PHONE EXT	Not exempt under the FOIA.	
122) CERTIFIER NON-U.S. PHONE	Not exempt under the FOIA.	
123) CERTIFIER FAX U.S. ONLY	Not exempt under the FOIA.	
124) CERTIFIER E-MAIL	Not exempt under the FOIA	
125) ALT CERTIFIER POC (IC)	Not exempt under the FOIA.	
126) ALT CERTIFIER U.S. PHONE	Not exempt under the FOIA.	
127) ALT CERTIFIER U.S. PHONE EXT	Not exempt under the FOIA.	
128) ALT CERTIFIER NON-U.S. PHONE	Not exempt under the FOIA.	
129) ALT CERTIFIER FAX US ONLY	Not exempt under the FOIA.	
130) ALT CERTIFIER E-MAIL	Not exempt under the FOIA.	
131) CORP INFO POC (CN)	Not exempt under the FOIA.	
132) CORP INFO U.S. PHONE	Not exempt under the FOIA.	
133) CORP INFO U.S. PHONE EXT	Not exempt under the FOIA.	
134) CORP INFO NON-U.S. PHONE	Not exempt under the FOIA.	
135) CORP INFO FAX U.S. ONLY	Not exempt under the FOIA.	
136) CORP INFO E-MAIL	Not exempt under the FOIA.	
137) OWNER INFO POC (OW)	Not exempt under the FOIA.	
138) OWNER INFO U.S. PHONE	Not exempt under the FOIA.	
139) OWNER INFO U.S. PHONE EXT	Not exempt under the FOIA.	
140) OWNER INFO NON-U.S. PHONE	Not exempt under the FOIA.	

FOIA REVIEW OF THE CCR DATA FIELDS—Continued

Data field	Exempt status	Public comments
141) OWNER INFO FAX U.S. ONLY	Not exempt under the FOIA.	
142) OWNER E-MAIL	Not exempt under the FOIA.	
143) EDI (y/n)	Not exempt under the FOIA.	
144) AVG NUMBER OF EMPLOYEES	Not exempt under the FOIA.	
145) ANNUAL REVENUE	Not exempt under the FOIA.	
146) AUTHORIZATION DATE (mmddyyyy)	Not exempt under the FOIA.	
147) EFT WAIVER	Not exempt under the FOIA.	
148) NAICS EXCEPTIONS COUNTER	Not exempt under the FOIA.	
149) NAICS EXCEPTIONS	Not exempt under the FOIA.	
150) EXTERNAL CERTIFICATION FLAG COUNTER	Not exempt under the FOIA.	
151) EXTERNAL CERTIFICATION FLAG	Not exempt under the FOIA.	
152) SBA CERTIFICATION FLAG COUNTER	Not exempt under the FOIA.	
153) SBA CERTIFICATION	Not exempt under the FOIA.	
154) CURRENT REG STATUS	Not exempt under the FOIA.	
155) CCR NUMERICS COUNTER	Not exempt under the FOIA.	
156) CCR NUMERICS	Exempt—5 U.S.C. 552(b)(4).	
157) BARRELS CAPACITY	Not exempt under the FOIA.	
158) MEGAWATTS HOURS	Not exempt under the FOIA.	
159) TOTAL ASSETS	Not exempt under the FOIA.	
160) FLAGS COUNTER	Not exempt under the FOIA.	
161) FLAGS	Not exempt under the FOIA	
162) DISASTER RESPONSE COUNTER	Not exempt under the FOIA.	
163) DISASTER RESPONSE	Not exempt under the FOIA.	
164) END-OF-RECORD INDICATOR	Not exempt under the FOIA.	
165) HEADQUARTER PARENT POC (HQ)	Exempt—5 U.S.C. 552(b)(4).	
166) HQ PARENT DUNS NUMBER	Exempt—5 U.S.C. 552(b)(4).	
167) HQ PARENT ST ADD (1)	Exempt—5 U.S.C. 552(b)(4).	
168) HQ PARENT ST ADD (2)	Exempt—5 U.S.C. 552(b)(4).	
169) HQ PARENT CITY	Exempt—5 U.S.C. 552(b)(4).	
170) HQ PARENT POSTAL CODE	Exempt—5 U.S.C. 552(b)(4).	
171) HQ PARENT COUNTRY CODE	Exempt—5 U.S.C. 552(b)(4).	
172) HQ PARENT STATE OR PROVINCE	Exempt—5 U.S.C. 552(b)(4).	
173) HQ PARENT PHONE	Exempt—5 U.S.C. 552(b)(4).	
174) DOMESTIC PARENT POC (DM)	Exempt—5 U.S.C. 552(b)(4).	
175) DOMESTIC PARENT DUNS NUMBER	Exempt—5 U.S.C. 552(b)(4).	
176) DOMESTIC PARENT ST ADD (1)	Exempt—5 U.S.C. 552(b)(4).	
177) DOMESTIC PARENT ST ADD (2)	Exempt—5 U.S.C. 552(b)(4).	
178) DOMESTIC PARENT CITY	Exempt—5 U.S.C. 552(b)(4).	
179) DOMESTIC PARENT POSTAL CODE	Exempt—5 U.S.C. 552(b)(4).	
180) DOMESTIC PARENT COUNTRY CODE	Exempt—5 U.S.C. 552(b)(4).	
181) DOMESTIC PARENT STATE OR PROVINCE	Exempt—5 U.S.C. 552(b)(4).	
182) DOMESTIC PARENT PHONE	Exempt—5 U.S.C. 552(b)(4).	
183) GLOBAL PARENT POC (GL)	Exempt—5 U.S.C. 552(b)(4).	
184) GLOBAL PARENT DUNS NUMBER	Exempt—5 U.S.C. 552(b)(4).	
185) GLOBAL PARENT ST ADD (1)	Exempt—5 U.S.C. 552(b)(4).	
186) GLOBAL PARENT ST ADD (2)	Exempt—5 U.S.C. 552(b)(4).	
187) GLOBAL PARENT CITY	Exempt—5 U.S.C. 552(b)(4).	
188) GLOBAL PARENT POSTAL CODE	Exempt—5 U.S.C. 552(b)(4).	
189) GLOBAL PARENT COUNTRY CODE	Exempt—5 U.S.C. 552(b)(4).	
190) GLOBAL PARENT STATE OR PROVINCE	Exempt—5 U.S.C. 552(b)(4).	
191) GLOBAL PARENT PHONE	Exempt—5 U.S.C. 552(b)(4).	
192) DNB MONITORING LAST UPDATED	Exempt—5 U.S.C. 552(b)(4).	
193) DNB MONITORING STATUS	Exempt—5 U.S.C. 552(b)(4).	
194) DNB MONITORING CORP NAME	Exempt—5 U.S.C. 552(b)(4).	
195) DNB MONITORING DBA	Exempt—5 U.S.C. 552(b)(4).	
196) DNB MONITORING ST ADD (1)	Exempt—5 U.S.C. 552(b)(4).	
197) DNB MONITORING ST ADD (2)	Exempt—5 U.S.C. 552(b)(4).	
198) DNB MONITORING CITY	Exempt—5 U.S.C. 552(b)(4).	
199) DNB MONITORING POSTAL CODE	Exempt—5 U.S.C. 552(b)(4).	
200) DNB MONITORING COUNTRY CODE	Exempt—5 U.S.C. 552(b)(4).	
201) DNB MONITORING STATE OR PROVINCE	Exempt—5 U.S.C. 552(b)(4).	
202) AUSTIN TETRA NUMBER	Exempt—5 U.S.C. 552(b)(4).	
203) AUSTIN TETRA PARENT NUMBER	Exempt—5 U.S.C. 552(b)(4).	
204) AUSTIN TETRA ULTIMATE NUMBER	Exempt—5 U.S.C. 552(b)(4).	
205) AUSTIN TETRA PCARD FLAG	Exempt—5 U.S.C. 552(b)(4).	
206) DUNS	Exempt—5 U.S.C. 552(b)(4).	
207) DUNS+4	Exempt—5 U.S.C. 552(b)(4).	
208) COMPANY SECURITY LEVEL	Exempt—5 U.S.C. 552(b)(4).	
209) EMPLOYEE SECURITY LEVEL	Exempt—5 U.S.C. 552(b)(4).	
210) TAX PAYER ID NUMBER	Exempt—5 U.S.C. 552(b)(4).	
211) SOCIAL SECURITY NUMBER	Exempt—5 U.S.C. 552(b)(4).	
212) FINANCIAL INSTITUTE	Exempt—5 U.S.C. 552(b)(4).	

FOIA REVIEW OF THE CCR DATA FIELDS—Continued

Data field	Exempt status	Public comments
213) ACCOUNT NUMBER	Exempt—5 U.S.C. 552(b)(4).	
214) ABA ROUTING ID	Exempt—5 U.S.C. 552(b)(4).	
215) PAYMENT TYPE (C or S)	Exempt—5 U.S.C. 552(b)(4).	
216) LOCKBOX NUMBER	Exempt—5 U.S.C. 552(b)(4).	
217) ACH U.S. PHONE	Exempt—5 U.S.C. 552(b)(4).	
218) ACH NON-U.S. PHONE	Exempt—5 U.S.C. 552(b)(4).	
219) ACH FAX	Exempt—5 U.S.C. 552(b)(4).	
220) ACH E-MAIL	Exempt—5 U.S.C. 552(b)(4).	
221) REMIT INFO POC	Exempt—5 U.S.C. 552(b)(4).	
222) REMIT INFO ST ADDRESS (1)	Exempt—5 U.S.C. 552(b)(4).	
223) REMIT INFO ST ADDRESS (2)	Exempt—5 U.S.C. 552(b)(4).	
224) REMIT INFO CITY	Exempt—5 U.S.C. 552(b)(4).	
225) REMIT INFO STATE/PROVINCE	Exempt—5 U.S.C. 552(b)(4).	
226) REMIT INFO POSTAL CODE	Exempt—5 U.S.C. 552(b)(4).	
227) REMIT INFO COUNTRY CODE	Exempt—5 U.S.C. 552(b)(4).	
228) ACCOUNTS REC POC	Exempt—5 U.S.C. 552(b)(4).	
229) ACCOUNTS REC US PHONE	Exempt—5 U.S.C. 552(b)(4).	
230) ACCOUNT REC US PHONE EXT	Exempt—5 U.S.C. 552(b)(4).	
231) ACCOUNT REC NON-US PHONE	Exempt—5 U.S.C. 552(b)(4).	
232) ACCOUNT REC FAX US ONLY	Exempt—5 U.S.C. 552(b)(4).	
233) ACCOUNTS REC EMAIL	Exempt—5 U.S.C. 552(b)(4).	
234) MARKETING PARTNER ID (MPIN)	Exempt—5 U.S.C. 552(b)(4).	
235) PARENT POC	Exempt—5 U.S.C. 552(b)(4).	
236) PARENT DUNS NUMBER	Exempt—5 U.S.C. 552(b)(4).	
237) PARENT ST ADD (1)	Exempt—5 U.S.C. 552(b)(4).	
238) PARENT ST ADD (2)	Exempt—5 U.S.C. 552(b)(4).	
239) PARENT CITY	Exempt—5 U.S.C. 552(b)(4).	
240) PARENT POSTAL CODE	Exempt—5 U.S.C. 552(b)(4).	
241) PARENT COUNTRY CODE	Exempt—5 U.S.C. 552(b)(4).	
242) PARENT STATE OR PROVINCE	Exempt—5 U.S.C. 552(b)(4).	
243) GOVT PARENT POC	Exempt—5 U.S.C. 552(b)(4).	
244) GOVT PARENT ST ADD (1)	Exempt—5 U.S.C. 552(b)(4).	
245) GOVT PARENT ST ADD (2)	Exempt—5 U.S.C. 552(b)(4).	
246) GOVT PARENT CITY	Exempt—5 U.S.C. 552(b)(4).	
247) GOVT PARENT POSTAL CODE	Exempt—5 U.S.C. 552(b)(4).	
248) GOVT PARENT COUNTRY CODE	Exempt—5 U.S.C. 552(b)(4).	
249) GOVT PARENT STATE OR PROVINCE	Exempt—5 U.S.C. 552(b)(4).	
250) EXECUTIVE COMPENSATION (QUESTION 1—MANDATORY)	Exempt—5 U.S.C. 552(b)(4).	
251) EXECUTIVE COMPENSATION (QUESTION 2—CONDITIONAL)	Exempt—5 U.S.C. 552(b)(4).	
252) EXECUTIVE COMPENSATION NAME (FIVE REPEATED FIELDS)	Exempt—5 U.S.C. 552(b)(4).	
253) EXECUTIVE COMPENSATION POSITION TITLE (FIVE REPEATED FIELDS)	Exempt—5 U.S.C. 552(b)(4).	
254) EXECUTIVE COMPENSATION TOTAL COMPENSATION AMOUNT (FIVE REPEATED FIELDS).	Exempt—5 U.S.C. 552(b)(4).	
*255) PROCEEDING (QUESTION 1—MANDATORY)	Exempt—5 U.S.C. 552(b)(4).	
*256) PROCEEDING (QUESTION 2—CONDITIONAL)	Exempt—5 U.S.C. 552(b)(4).	
*257) PROCEEDING (QUESTION 3—CONDITIONAL)	Exempt—5 U.S.C. 552(b)(4).	
*258) PROCEEDING TYPE CODE (CONDITIONAL)	Exempt—5 U.S.C. 552(b)(4).	
*259) PROCEEDING DATE (CONDITIONAL)	Exempt—5 U.S.C. 552(b)(4).	
*260) PROCEEDING DESCRIPTION (CONDITIONAL)	Exempt—5 U.S.C. 552(b)(4).	

Christopher Fornecker,

Director, Acquisition Systems Division.

[FR Doc. 2011–12986 Filed 5–25–11; 8:45 am]

BILLING CODE 6820–27–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Notice of Interest Rate on Overdue Debts

Section 30.18 of the Department of Health and Human Services' claims collection regulations (45 CFR part 30) provides that the Secretary shall charge an annual rate of interest, which is determined and fixed by the Secretary of the Treasury after considering private consumer rates of interest on the date that the Department of Health and Human Services becomes entitled to recovery. The rate cannot be lower than the Department of Treasury's current value of funds rate or the applicable rate determined from the "Schedule of Certified Interest Rates with Range of Maturities" unless the Secretary waives interest in whole or part, or a different rate is prescribed by statute, contract, or repayment agreement. The Secretary of the Treasury may revise this rate quarterly. The Department of Health and Human Services publishes this rate in the **Federal Register**.

The current rate of 11%, as fixed by the Secretary of the Treasury, is certified for the quarter ended March 31, 2011. This interest rate is effective until the Secretary of the Treasury notifies the Department of Health and Human Services of any change.

Dated: May 6, 2011.

Molly P. Dawson,

Director, Office of Financial Policy and Reporting.

[FR Doc. 2011–13083 Filed 5–25–11; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the National Vaccine Advisory Committee; Vaccine Safety Working Group

AGENCY: Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice of meeting.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the Department of Health and Human Services (DHHS) is hereby giving notice that the Vaccine Safety Working Group (VSWG) of the National Vaccine Advisory Committee (NVAC) will hold a meeting. The meeting is open to the public. Pre-registration is required for public attendance. Individuals who wish to attend the meeting should register at *http://www.hhs.gov/nvpo/nvac,* e- mail *nvpo@hhs.gov* or call 202–690–5566 and provide name, organization and e-mail address.

DATES: The meeting will be on June 13, 2011. The meeting times and agenda will be posted on the NVAC Web site at *http://www.hhs.gov/nvpo/nvac* as soon it becomes available.

ADDRESSES: Department of Health and Human Services; Hubert H. Humphrey Building, Room 800, 200 Independence Avenue, SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: National Vaccine Program Office, Department of Health and Human Services, Room 715–H, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201. *Phone:* (202) 690–5566; *Fax:* (202) 690–4631; *e-mail:* nvpo@hhs.gov.

SUPPLEMENTARY INFORMATION: Pursuant to Section 2101 of the Public Health Service Act (42 U.S.C. 300aa–1), the Secretary of Health and Human Services was mandated to establish the National Vaccine Program to achieve optimal prevention of human infectious diseases through immunization and to achieve optimal prevention against adverse reactions to vaccines. The National Vaccine Advisory Committee was established to provide advice and make recommendations to the Director of the National Vaccine Program on matters related to the Program's responsibilities. The Assistant Secretary for Health serves as Director of the National Vaccine Program.

The topic to be discussed at the VSWG meeting will be the VSWG draft report. The meeting agenda will be posted on the Web site: *http://www.hhs.gov/nvpo/nvac* at least one week prior to the meeting.

Public attendance at the meeting is 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 National Vaccine Program Office at the address/phone listed above at least one week prior to the meeting. Members of the public will have the opportunity to observe the meeting and submit written comments to the VSWG's draft report and draft recommendations in advance of the meeting. Individuals who would like to submit written statements should e-mail or fax their comments to the National Vaccine Program Office at least five business days prior to the meeting.

Dated: May 19, 2011.

Mark Grabowsky,

Deputy Director, National Vaccine Program Office.

[FR Doc. 2011–13080 Filed 5–25–11; 8:45 am]

BILLING CODE 4150–44–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the National Vaccine Advisory Committee

AGENCY: Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice of meeting.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the Department of Health and Human Services (DHHS) is hereby giving notice that the National Vaccine Advisory Committee (NVAC) will hold a meeting. The meeting is open to the public. Pre-registration is required for both public attendance and comment. Individuals who wish to attend the meeting and/or participate in the public comment session should register at *http://www.hhs.gov/nvpo/nvac,* e-mail *nvpo@hhs.gov* or call 202–690–5566 and provide name, organization and e-mail address.

DATES: The meeting will be held on June 14–15, 2011. The meeting times and agenda will be posted on the NVAC Web site at *http://www.hhs.gov/nvpo/nvac* as soon they become available.

ADDRESSES: Department of Health and Human Services; Hubert H. Humphrey Building, Room 800, 200 Independence Avenue, SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: National Vaccine Program Office, Department of Health and Human Services, Room 715–H, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201. *Phone:* (202) 690–5566; *Fax:* (202) 690–4631; *e-mail: nvpo@hhs.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to Section 2101 of the Public Health Service Act (42 U.S.C. 300aa–1), the Secretary of Health and Human Services was mandated to establish the National Vaccine Program to achieve optimal prevention of human infectious diseases through immunization and to achieve optimal prevention against adverse reactions to vaccines. The National Vaccine Advisory Committee was established to provide advice and make recommendations to the Director of the National Vaccine Program on matters related to the Program's responsibilities. The Assistant Secretary for Health serves as Director of the National Vaccine Program.

The topics to be discussed at the NVAC meeting will include seasonal influenza, the National Vaccine Plan, and vaccine safety. The meeting agenda will be posted on the Web site: *http://www.hhs.gov/nvpo/nvac* at least one week prior to the meeting.

Public attendance at the meeting is 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 National Vaccine Program Office at the address/phone listed above at least one week prior to the meeting. Members of the public will have the opportunity to provide comments at the NVAC meeting, limited to five minutes per speaker, during the public comment periods on the agenda. Individuals who would like to submit written statements should e-mail or fax their comments to the National Vaccine Program Office at least five business days prior to the meeting.

Dated: May 19, 2011.

Mark Grabowsky,

Deputy Director, National Vaccine Program Office.

[FR Doc. 2011–13081 Filed 5–25–11; 8:45 am]

BILLING CODE 4150–44–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Meeting of the Task Force on Community Preventive Services

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of meeting.

SUMMARY: The Centers for Disease Control and Prevention (CDC) announces the next meeting of the Task Force on Community Preventive Services (Task Force). The Task Force—an independent, nonfederal body of nationally known leaders in public health practice, policy, and research who are appointed by the CDC Director—was convened in 1996 by the Department of Health and Human Services (HHS) to assess the effectiveness of community, environmental, population, and healthcare system interventions in public health and health promotion. During this meeting the Task Force will consider the findings of systematic reviews and issue recommendations and findings to help inform decision making about policy, practice, and research in a wide range of U.S. settings. The Task Force's recommendations, along with the systematic reviews of the scientific evidence on which they are based, are compiled in the *Guide to Community Preventive Services (Community Guide).*

DATES: The meeting will be held on Wednesday, June 15, 2011 from 8:30 a.m. to 5:30 p.m., EST and Thursday, June 16, 2011 from 8:30 a.m. to 1 p.m. EST.

ADDRESSES: The Task Force Meeting will be held via conference call and Live Meeting. Information regarding logistics will be available on the Community Guide Web site (*http://www.thecommunityguide.org*), Wednesday, June 1, 2011.

FOR FURTHER INFORMATION CONTACT: Sara Dodge, Division of Community Preventive Services, Epidemiology and Analysis Program Office, Office of Surveillance, Epidemiology, and Laboratory Services, Centers for Disease Control and Prevention, 1600 Clifton Road, Atlanta, Georgia 30333, phone: (404) 498–0554, e-mail: *communityguide@cdc.gov.*

SUPPLEMENTARY INFORMATION:

Purpose: The purpose of the meeting is for the Task Force to consider the findings of reviews and issue recommendations and findings to help inform decision making about policy, practice, and research in a wide range of U.S. settings.

Matters to be discussed: Effectiveness of: Mass media campaigns to prevent skin cancer; school dismissal policy to reduce influenza transmission; extended school hours to promote health equity; and out-of-school programs to promote health equity. New reviews on cardiovascular disease and tobacco will also be discussed.

Meeting Accessibility: This meeting is open to the public, limited only by teleconference space availability.

Dated: May 18, 2011.

Tanja Popovic,

Deputy Associate Director for Science, Centers for Disease Control and Prevention.

[FR Doc. 2011–13043 Filed 5–25–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Breast and Cervical Cancer Early Detection and Control Advisory Committee (BCCEDCAC)

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 meeting of the aforementioned committee:

Times and Dates:

9 a.m.–5 p.m., June 16, 2011.

9 a.m.–12:30 p.m., June 17, 2011.

Place: Westin Atlanta Perimeter North, 7 Concourse Parkway NE., Atlanta, GA 30328, Telephone: (770) 395–3900.

Purpose: The committee is charged with advising the Secretary, Department of Health and Human Services, and the Director, CDC, regarding the early detection and control of breast and cervical cancer. The committee makes recommendations regarding national program goals and objectives; implementation strategies; and program, priorities including surveillance, epidemiologic investigations, education and training, information dissemination, professional interactions and collaborations, and policy.

Matters To Be Discussed: The agenda will include discussion and review of Healthcare Reform and its impact for breast and cervical cancer screening; updates on the National Breast and Cervical Cancer Early Detection Program Marketing Tool kit for increased awareness for the state programs; Presentations with updates on Care Coordination and Best Practices; Discussion of what, if any, modifications should be made to the NBCCEDP's current screening policies based on new and updated Healthcare Reform policies.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Jameka R. Blackmon, Executive Secretary, BCCEDCAC, Division of Cancer Prevention and Control, National Center for Chronic Disease Prevention and Health Promotion, CDC, 4770 Buford Highway, Mailstop K–57, Chamblee, Georgia 30314, Telephone: (770) 488–4880.

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: May 19, 2011.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2011–13047 Filed 5–25–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: The Evaluation of Early Learning Mentor Coaches Grants.

OMB No.: New Collection.

Description: The Administration for Children and Families is requesting comments on a submission for OMB review for a proposed information collection as part of an implementation evaluation of the Early Learning Mentor Coaches Grants. The evaluation will collect information necessary for understanding the approaches being used by the 131 Head Start and Early Head Start grantees who were awarded funds under the American Recovery and Reinvestment Act of 2009—Early Learning Mentor Coach funding announcement (Funding Opportunity Number HHS–201–ACF–OHSST–0120).

The overall objective of the evaluation of the Early Learning Mentor Coaches (ELMC) Grants is to identify the critical aspects of the ELMC grant initiative by (1) Describing the implementation of the ELMC grants in HS and EHS programs; (2) examining the implementation quality of ELMC efforts; and (3) examining factors that might be related to successful mentor-coaching. To meet these objectives the evaluation will capture information to describe the goals for the mentor-coaching initiative, the key features of the mentor-coaching approaches, how grantees structured their initiatives, the integration of mentor-coaching into ongoing program operations, and plans for sustainability.

Additionally, the evaluation will capture information to describe the quality of the implementation of the various mentor-coaching approaches including consistency of the mentor-coach implementation with the planned approach, the frequency and content of interactions between the mentor-coaches and the teaching staff, and apparent changes in teaching staff behavior, including their own professional development. The evaluation will also capture information about the characteristics of those who provided coaching, the characteristics of teaching staff that were mentored, as well as the characteristics of the settings and the systems in which the mentor-coaching was embedded. Lastly, the evaluation will document the factors that appear to be most critical to successful implementation and implementation challenges.

The data collection will include a census survey of all grantees; a census survey of all mentor-coaches; telephone interviews with a sub-sample of administrators, mentor-coaches, and teaching staff; and a mentor-coach activity snapshot.

Respondents: Grantee and center administrative staff, mentor-coaches, teaching staff.

ANNUAL BURDEN ESTIMATES

Instrument	Annual number of respondents	Number of responses per respondent	Average burden hours per response	Total annual burden hours
Grantee Census Survey	131	1	0.5	66
Mentor-Coach Census Survey	400	1	0.5	200
Administrator Telephone Interview	85	1	1.0	85
Mentor-Coach Telephone Interview	65	1	1.0	65
Teaching Staff Telephone Interview	130	1	1.0	130
Mentor-Coach Activity Snapshot	65	2	0.25	33

Estimated Total Annual Burden Hours: 579.

Additional Information: In compliance with the requirements of Section 3506(C)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: OPRE Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *OPREinfocollection@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: 202–395–6974, Attn: Desk Officer for the Administration for Children and Families.

Dated: May 17, 2011.

Steven M. Hanmer,

OPRE Reports Clearance Officer.

[FR Doc. 2011–12787 Filed 5–25–11; 8:45 am]

BILLING CODE 4184–22–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–D–0153]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Draft Guidance for Industry and Food and Drug Administration Staff: Food and Drug Administration and Industry Procedures for Section 513(g) Requests for Information Under the Federal Food, Drug, and Cosmetic Act

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Fax written comments on the collection of information by June 27, 2011.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or e-mailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–NEW and title "Draft Guidance for Industry and FDA Staff: FDA and Industry Procedures for Section 513(g) Requests for Information Under the Federal Food, Drug, and Cosmetic Act." Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Daniel Gittleson, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–5156, *Daniel.Gittleson@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Draft Guidance for Industry and FDA Staff: FDA and Industry Procedures for Section 513(g) Requests for Information under the Federal Food, Drug, and Cosmetic Act—(OMB Control Number 0910–NEW)

Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from OMB for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide

information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, in the **Federal Register** of April 29, 2010 (75 FR 22599), FDA published a notice of availability of the draft guidance document providing a 60-day public comment period on the proposed collection of information provisions.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Draft Guidance for Industry and FDA Staff: FDA and Industry Procedures for Section 513(g) Requests for Information Under the Federal Food, Drug, and Cosmetic Act.

Description: Section 513(g) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360c(g)) provides a means for obtaining the Agency's views about the classification and regulatory requirements that may be applicable to your particular device. Section 513(g) provides that within 60 days of the receipt of a written request of any person for information respecting the class in which a device has been classified or the requirements applicable to a device under the FD&C Act, the Secretary of Health and Human Services shall provide such person a written statement of the classification (if any) of such device and the requirements of the FD&C Act applicable to the device.

Section 513(g) of the FD&C Act provides a means for obtaining FDA's views about the classification and the regulatory requirements that may be applicable to a particular device. The purpose of this draft guidance is to establish procedures for submitting, reviewing, and responding to requests for information respecting the class in which a device has been classified or the requirements applicable to a device under the FD&C Act that are submitted in accordance with section 513(g) of the FD&C Act. FDA does not review data related to substantial equivalence or safety and effectiveness in a 513(g) request for information. FDA's responses to 513(g) requests for information are not device classification decisions and do not constitute FDA clearance or approval for marketing. Classification decisions and clearance or approval for marketing require submissions under different sections of the FD&C Act. Additionally, the FD&C Act, as amended by the FDA Amendments Act of 2007 (Pub. L. 110–85), requires FDA to collect user fees for 513(g) requests for information.

In the **Federal Register** of April 29, 2010, FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

FD&C Act 513(g)	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response (in hours)	Total hours
Center for Devices and Radiological Health (CDRH)	110	1	110	12	1,320
Center for Biologics Evaluation and Research (CBER)	4	1	4	12	48
Total					1,368

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Respondents to this collection of information are mostly device manufacturers; however, anyone may submit a 513(g) request for information. The total number of annual responses is based on the average number of 513(g) requests received each year by the Agency. FDA based its estimates on the number of 513(g) requests for information received by both CDRH and CBER from 2007 to 2009.

Dated: May 20, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–13058 Filed 5–25–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0320]

Agency Information Collection Activities; Proposed Collection; Comment Request; Experimental Study on Consumer Responses to Whole Grain Labeling Statements on Food Packages

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information and to allow 60 days for public comment in response to the notice. This notice solicits comments on a study entitled: "Experimental Study on Consumer Responses to Whole Grain Labeling Statements on Food Packages."

DATES: Submit either electronic or written comments on the collection of information by July 25, 2011.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov.* Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the

docket number found in brackets in the heading of this document. For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–3793.

I. Background

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Experimental Study on Consumer Responses to Whole Grain Labeling Statements on Food Packages, 21 U.S.C. 393(d)(2)(C)—(OMB Control Number 0910—New)

The Nutrition Labeling and Education Act (NLEA), which amended the Food, Drug and Cosmetic Act, requires most foods to bear nutrition labeling (*i.e.,* the Nutrition Facts), and requires food labels that bear nutrient content claims and certain health messages to comply with specific requirements. There are three different types of claims (health claims, nutrient content claims, and structure/function claims) that the food industry can voluntarily use on food labels. Although they are regulated differently, they all must be truthful and not misleading (Ref. 1).

In the past 30 years, whole-grain consumption has been greatly promoted by government agencies and scientific communities as an important part of a healthy diet (Refs. 2 and 3). For example, the newly-released "Dietary Guidelines for Americans 2010" recommends Americans eat fewer refined grains, and consume more nutrient-dense whole grains instead (Ref. 4). At the same time, whole grain labeling statements, such as "Made With Whole Grain," on food products have also become more prevalent in recent years (Ref. 5). Given the variety of whole-grain statements on food products and the importance of whole grains in maintaining a healthy diet, it is important for policy makers to gain a better understanding of how consumers interpret these statements.

Several studies indicate that consumers may have difficulties in understanding the meaning of whole grains or recognizing whole-grain foods (Refs. 6 to 8). Research also suggests consumer product perceptions and purchase decisions can be influenced by labeling statements and different labeling statements may have different influences (Refs. 9 and 10). The majority of existing studies focus on whole grain intake or the relationships between whole grain and disease prevention. There is a lack of systematic investigation of consumers' understanding of different whole-grain labeling statements. We are aware of at least one existing study related to the statements (Ref. 11). However, the study did not compare consumer reactions to various whole-grain statements. Therefore, the FDA, as part of its effort to promote public health, plans to use the proposed study to explore and compare consumer responses to food labels that use whole grains labeling statements.

Specifically, the study plans to examine: (1) Consumer judgments about a food product including its nutritional attributes, overall healthiness, and health benefits; (2) consumer judgments about a label in terms of its credibility in conveying the product's nutritional attributes and its helpfulness in making product purchasing decisions; (3) consumer perceptions about differences between different statements, such as "Made with Whole Grain," "Contains Whole Grain," and "Whole Grain;" (4) consumer extrapolation of whole grain statements beyond the scope of the statements themselves (*i.e.,* halo effects); and (5) how whole grain statements influence consumer use of the Nutrition Facts.

The proposed collection of information is a controlled randomized experimental study. The study will use a 15-minute Web-based survey to collect information from 2,700 English-speaking adult members of an online consumer panel maintained by a contractor. The study will aim to produce a sample that reflects the U.S. Census on gender, education, age, and ethnicity/race.

The study will randomly assign each participant to view two label images from a set of food labels that will be created for the study and systematically varied in the: (1) Whole grain labeling statements; (2) nutritional profiles (differing by the amount of fiber); (3) ingredient lists (differing by the ranking order of whole grain wheat on the list); and (4) featured product (*e.g.,* bread, cereal, and breakfast bars). With regard to claims, the study will focus on examples of whole grain statements that can be found on food packages. All label images will be mock-ups resembling food labels that may be found in the marketplace. Images will show product identity (*e.g.,* bread), but not any real or fictitious brand name. The study will provide interested participants access to the Nutrition Facts, but not together with a product image.

The survey will ask its participants to view two label images one at a time and answer questions about their perceptions and reactions related to each of the products and labels. Product perceptions (*e.g.,* healthiness, potential health benefits, levels of whole grains and fiber amount) and label perceptions (*e.g.,* helpfulness and credibility) will constitute the measures of responses in the experiment. To help understand the data, the survey will also collect information about participants' backgrounds, such as consumption, purchase history, perception, and familiarity with a category of food; awareness and knowledge of nutrients and substances; health literacy; and health status and demographic characteristics.

The study is part of the agency's continuing effort to enable consumers to make informed dietary choices and construct healthful diets. Results of the study will be used primarily to enhance the agency's understanding of how whole grains claims and other related

labeling statements on food packages may affect how consumers perceive a product or a label, which may in turn affect their dietary choices. Results of the study will not be used to develop population estimates.

To help design and refine the questionnaire, FDA plans to conduct cognitive interviews by screening 72 panelists in order to obtain 9 participants in the interviews. Each screening is expected to take 5 minutes (0.083 hour) and each cognitive interview is expected to take one hour. The total for cognitive interview activities is 15 hours (6 hours + 9 hours). Subsequently, we plan to conduct pretests of the questionnaire before it is administered in the study. We expect that 1,600 invitations, each taking 2 minutes (0.033 hour), will need to be sent to panelists to have 200 of them complete a 15-minute (0.25 hour) pretest. The total for the pretest activities is 103 hours (53 hours + 50 hours). For the survey, we estimate that 21,600 invitations, each taking 2 minutes (0.033 hour) to complete, will need to be sent to the consumer panel to have 2,700 of its members complete a 15-minute (0.25 hour) questionnaire. The total for the survey activities is 1,388 hours (713 hours + 675 hours). Thus, the total estimated burden is 1,506 hours. FDA's burden estimate is based on prior experience with research that is similar to this proposed study.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Portion of study	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response (in hours) [2]	Total hours
Cognitive interview screener	72	1	72	5/60	6
Cognitive interview	9	1	9	1	9
Pretest invitation	1,600	1	1,600	2/60	53
Pretest	200	1	200	15/60	50
Survey invitation	21,600	1	21,600	2/60	713
Survey	2,700	1	2,700	15/60	675
Total					1,506

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Burden estimates of less than 1 hour are expressed as a fraction of an hour in the format "[number of minutes per response]/60".

II. References

The following references are on display in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20857, under Docket No. FDA–2011–N–0320 and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday. We have verified all Web site addresses, but we are not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**.

1. U.S. Food and Drug Administration, "Claims That Can Be Made for Conventional Foods and Dietary Supplements," September 2003, available at *http://www.fda.gov/Food/LabelingNutrition/LabelClaims/ucm111447.htm.*
2. Cleveland, L. E., A.J. Moshfegh, A.M. Albertson, and J.D. Goldman, "Dietary intake of whole grains," *Journal of the American College of Nutrition,* 19, 331S–338S, 2000.
3. Kantor, L. S., J.N. Variyam, J.E. Allshouse, J.J. Putnam, and B.H. Lin, "Choose a variety of grains daily, especially whole grains: A challenge for consumers," *Journal of Nutrition,* 131, 473S–486S, 2001.
4. U.S. Department of Agriculture and U.S. Department of Health and Human Services. "Executive Summary of Dietary Guidelines for Americans, 2010," January 2011, available at *http://www.cnpp.usda.gov/Publications/DietaryGuidelines/2010/PolicyDoc/ExecSumm.pdf.*
5. *Supermarket News,* "Report: Whole Grains Gain Momentum," September 2010, available at *http://supermarketnews.com/news/whole_grains_0917/#.*
6. Arvola, A., L.Lähteenmäki, M. Dean, M. Vassallo, M. Winkelmann, E. Claupein, A. Saba, and R. Shepherd, "Consumers' beliefs about whole and refined grain products in the UK, Italy and Finland," *Journal of Cereal Science,* 46, 197–206, 2007.
7. Kantor, L. S., J.N. Variyam, J.E. Allshouse, J.J. Putnam, and B.H.Lin, "Choose a variety of grains daily, especially whole grains: A challenge for consumers," *Journal of Nutrition,* 131, 473S–486S, 2001.
8. Marquart, L., K.L. Wiemer, J.M. Jones, and B.Jacob, "Whole grain health claims in the U.S.A. and other efforts to increase whole-grain consumption," *Proceedings of the Nutrition Society,* 62, 151–159, 2003.
9. Drichoutis, A.C., P. Lazaridis, and R.M. Nayga, "Consumers' Use of Nutritional Labels: A Review of Research Studies and Issues," *Academy of Marketing Science Review,* 2006(9), 2006.
10. Willis, Josephine M., and K.G. Grunert, "A Review of Research on Consumer Response to Nutrition Information on Food Packaging," 2007.
11. Kellogg Co. "A Survey of Consumers' Whole Grain & Fiber Consumption Behaviors, and the Perception of Whole Grain Foods as a Source of Dietary Fiber," 2010. FDA Docket No. 2006–D–0298, July 2010, available at *http://www.regulations.gov/#!documentDetail;D=FDA-2006-D-0298-0016.*

Dated: May 20, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–13060 Filed 5–25–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0366]

Food and Drug Administration Food Safety Modernization Act: Focus on Inspections and Compliance

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public meeting entitled "FDA Food Safety Modernization Act: Focus on Inspections and Compliance." The purpose of the public meeting is to provide interested persons an opportunity to discuss implementation of inspections and compliance under the recently enacted FDA Food Safety Modernization Act (FSMA). More specifically, the public will have an opportunity to provide information and share views that will inform FDA's

FSMA implementation strategies relative to enforcement authorities; frequency and targeting of facility inspections; manner of inspection in a preventive controls environment; and improving the reportable food registry (RFR).

DATES: See table 1 in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Patricia M. Kuntze, Office of External Affairs, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, rm. 5322, Silver Spring, MD 20993, 301–796–8641, *Patricia.Kuntze@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FSMA (Pub. L. 111–353) amends the Federal Food, Drug, and Cosmetic Act (the FD&C Act) to establish the foundation for a modernized, prevention-based food safety system. The legislation recognizes that inspection is an important means of assessing industry compliance with the law and holding industry accountable for their responsibility to produce a safe product. FDA will meet this expectation by:

- Using the new enforcement authorities granted by FSMA,
- Applying its inspection resources in a risk-based manner, and
- Adopting inspection approaches that promote the efficient and effective use of existing resources.

Section 102 of FSMA, among other things, amends section 415 of the FD&C Act (21 U.S.C. 350d) for various purposes, including authorizing the Secretary of Health and Human Services to suspend registration of a facility if she determines that food manufactured, processed, packed, received, or held by the facility poses a reasonable probability of serious adverse health consequences or death and the facility either created, caused, or was otherwise responsible for that reasonable probability or knew of, or had reason to know of, such reasonable probability and packed, received, or held the food. A facility that is under suspension is prohibited from introducing food into commerce in the United States.

Section 201 of FSMA, among other things, creates a new section 421 of the FD&C Act (21 U.S.C. 350j) that establishes a mandated inspection frequency, based on risk, for food facilities that are required to register under section 415 of the FD&C Act and requires the frequency of inspection of such facilities to increase immediately. All high-risk domestic facilities must be inspected within 5 years of FSMA's enactment and no less than every 3 years thereafter. Non-high-risk domestic facilities must be inspected within 7 years of FSMA's enactment and no less than every 5 years thereafter. Within 1 year of FSMA's enactment, the law directs FDA to inspect at least 600 foreign facilities and to double those inspections every year for the next 5 years.

Section 206 of FSMA creates a new section 423 of the FD&C Act (21 U.S.C. 3501) to provide FDA with mandatory recall authority for foods other than infant formula. This authority applies when FDA determines that there is a reasonable probability that an article of food is adulterated under section 402 of the FD&C Act (21 U.S.C. 342) or misbranded under section 403(w) of the FD&C Act (21 U.S.C. 343(w)) and the use of or exposure to such article of food will cause serious adverse health consequences or death to humans or animals.

Section 207 of FSMA amends section 304(h)(1)(A) of the FD&C Act (21 U.S.C. 334(h)(1)(A)) to provide FDA with a more flexible standard for administratively detaining human and animal food products that are potentially in violation of the FD&C Act. Under the new law, FDA may administratively detain food if FDA has reason to believe that the food is adulterated or misbranded. Administrative detention is the procedure FDA uses to keep suspect food from being moved.

Section 211 of FSMA amends section 417 of the FD&C Act (21 U.S.C. 350f), among other things, to require FDA to publish, on the Web, an easily printable one page summary of certain consumer-oriented information regarding certain reportable foods, including information necessary to enable a consumer to accurately identify whether the consumer is in possession of the reportable food. Grocery stores that sold a reportable food that is the subject of a summary posting and that are part of a chain of establishments with 15 or more physical locations will be required to prominently display such summary or the information from such summary via at least one of the methods to be identified by FDA within 24 hours after FDA publishes the summary.

II. Purpose and Format of the Meeting

If you wish to attend and/or present at the meeting scheduled for June 6, 2011, please register by e-mail to *http://www.blsmeetings.net/FDAInspection&Compliance* by May 31, 2011. FDA is holding the public meeting to receive input from the public to inform FDA's implementation of the FSMA provisions identified previously in this document.

In general, the meeting format will include introductory presentations by FDA. Listening to our stakeholders is the primary purpose of this meeting. In order to meet this goal, FDA will provide multiple opportunities for individuals to actively express their views by making presentations at the meeting, participating in a total of three 75-minute breakout sessions on the provisions discussed at the meeting, and submitting written comments to the docket(s) within 30 days after this meeting. Participants can select up to three of the following four breakout sessions: Enforcement authorities, frequency and targeting of facility inspections, manner of inspection in a preventive controls environment, and improving the RFR.

FDA requests comment on the following questions in the break-out sessions:

1. Enforcement Authorities

- How do you suggest FDA employ the use of its revised administrative detention authority in a preventive controls environment?
- State regulators—can you provide examples where you have recently used your embargo/detention authorities? Can you describe examples where States have used embargo in situations where the subject food was produced contrary to established food safety preventive control standards; for instance, contrary to those standards defined under the juice or seafood Hazard Analysis and Critical Control Points rules?
- How do you see FDA implementing food facility registration suspension, and under what circumstances should FDA use its suspension authority? Under what circumstances should FDA use its mandatory food recall authority? Under what circumstances do you envision FDA using food facility registration suspension in conjunction with ordering a mandatory food recall?

2. Frequency and Targeting of Facility Inspections

- What data sources are available that could assist with the designation of high risk/non-high risk facility inventories? What data sources could assist with targeting foreign firms for inspection?
- What criteria should FDA consider when defining its high risk and non-high risk facility inventories? If the criteria you suggest require use of data that FDA does not currently collect or otherwise possess, how should FDA acquire that information?
- How should FDA evaluate or "weigh" the criteria to determine risk?

What factor(s) should be considered the most important and should this vary depending on the circumstances?

3. Manner of Inspection in a Preventive Controls Environment

- What inspection approaches could FDA use to satisfy the domestic and foreign inspection frequency mandates, including by working with State and local governments?
- What inspection tools (*e.g.,* new technologies) could FDA use to meet the domestic and foreign inspection frequency mandates?
- How might FDA use firms' written preventive control plans that will be required in the future under section 103 of FSMA, or information from those plans, to prioritize FDA's work and develop inspectional strategies?
- How should FDA work with foreign governments with respect to inspections of those food facilities in their countries that offer food products for import to the United States?

4. Improving the RFR

- What information is necessary to enable a consumer to accurately identify whether the consumer is in possession of a reportable food?
- What methods could best be used by grocery stores to inform consumers of information to enable them to identify whether they possess a reportable food?
- Are there other approaches to getting key information in the hands of consumers in real time that FDA should also consider pursuing?
- Who should FDA consider to be a grocery store subject to the consumer notification requirement in section 417(h) of the FD&C Act?
- What methods are grocery stores currently using to provide notice of food recalls to consumers?

There will be an interactive Web cast; see section III of this document. If you would like to participate at the meeting via the Web cast, please register at *http://www.blsmeetings.net/FDAInspection&Compliance.* In order to provide Web cast participants with information before and after the meeting, we request attendees provide their name, their affiliation, and e-mail when registering. It is recommended that attendees via Web cast test their Internet connection to confirm access of the Web cast prior to the meeting. To test this connection, visit *http://fda.yorkcast.com/webcast/Catalog/catalogs/default.aspx* and click on "CDRH Television Tutorial and Firewall Test."

III. How To Participate in the Meeting

Stakeholders will have an opportunity to provide oral comments. Due to limited space and time, FDA encourages all persons who wish to attend the meeting, either onsite or by Web cast, including those requesting an opportunity to make an oral presentation during the time allotted for public comment at the meeting, to register in advance and to provide the specific topic or issue to be addressed and the approximate desired length of their presentation. Depending on the number of requests for such oral presentations, there may be a need to limit the time of each oral presentation (*e.g.,* 3 minutes each). If time permits, individuals or organizations that did not register in advance may be granted the opportunity for such an oral presentation. FDA would like to maximize the number of stakeholders who make a presentation at the meeting and will do our best to accommodate all persons who wish to make a presentation or express their views at the meeting. FDA anticipates that there will be several opportunities to speak in breakout sessions and an interactive Web cast will also be available for stakeholders who are not onsite.

FDA encourages persons and groups who have similar interests to consolidate their information for presentation through a single representative. After reviewing the presentation requests, FDA will notify each participant before the meeting of the amount of time available and the approximate time their presentation is scheduled to begin. There is no fee to register for the public meeting and registration will be on a first-come, first-served basis. Early registration is recommended because seating is limited. Onsite registration will be accepted after all pre-registered attendees are seated. Table 1 of this document provides information on participating in the meeting and on submitting comments to the docket (see table 2 of this document for a list of docket numbers and corresponding sections of FSMA).

TABLE 1—INFORMATION ON PARTICIPATION IN THE MEETING AND SUBMITTING COMMENTS

	Date	Electronic address	Address (nonelectronic)	Other information
Date of Public Meeting.	June 6, 2011, 9 a.m. to 5:30 p.m..	.....	FDA White Oak Campus, The Great Room, Bldg. 31, rm. 1503, 10903 New Hampshire Ave., Silver Spring, MD 20993.	Registration begins at 7:30 a.m.
Web cast Registration.	Ongoing	*http://www.blsmeetings.net/FDAInspection&Compliance.* It is recommended that attendees via Webcast test their Internet connection to confirm access to the Webcast prior to the meeting. To test this connection, visit *http://fda.yorkcast.com/webcast/Catalog/catalogs/default.aspx* and click on "CDRH Television Tutorial and Firewall Test".		
Advance Registration.	By May 31, 2011.	*http://www.blsmeetings.net/FDAInspection&Compliance.*	.....	Registration to attend the meeting will also be accepted onsite on the day of the meeting, as space permits. Registration information may be posted without change to *http://www.regulations.gov,* including any personal information provided.

TABLE 1—INFORMATION ON PARTICIPATION IN THE MEETING AND SUBMITTING COMMENTS—Continued

	Date	Electronic address	Address (nonelectronic)	Other information
Request special accommodations due to disability.	By May 31, 2011.	.....	*Patricia M. Kuntze, 301–796–8641, e-mail: Patricia.Kuntze@fda.hhs.gov.*	
Make a request for oral presentation.	By May 31, 2011.	*http://www.blsmeetings.net/FDAInspection&Compliance.*	.....	Written material associated with an oral presentation should be submitted in Microsoft PowerPoint, Microsoft Word, or Adobe Portable Document Format and may be posted without change to *http://www.regulations.gov,* including any personal information provided.
Provide a brief description of the oral presentation and any written material for the presentation.	By May 31, 2011.	*http://www.blsmeetings.net/FDAInspection&Compliance.*	.....	All comments must include the Agency name and the docket number corresponding with the section of FSMA on which you are commenting (see table 2 of this document for a list of docket numbers and corresponding sections of FSMA). All received comments may be posted without change to *http://www.regulations.gov,* including any personal information provided.
Submit electronic or written comments.	Submit comments by July 6, 2011.	*Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.*	FAX: 301–827–6870. Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions): Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.	FDA encourages the submission of electronic comments by using the Federal eRulemaking Portal. For additional information on submitting comments, see section IV of this document.

IV. Comments

Regardless of attendance at the public meeting, interested persons may submit to the Division of Dockets Management (see table 1 of this document) either electronic or written comments for consideration at or after the meeting in addition to, or in place of, a request for an opportunity to make an oral presentation. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments.

TABLE 2

Section of FSMA	Topic	Docket No.
102	Registration of Food Facilities—Suspension of Registration	FDA–2011–N–0390
201	Targeting of Inspection Resources for Domestic Facilities and Foreign Facilities—Identification and Inspection of Facilities.	FDA–2011–N–0391
206	Mandatory Recall Authority	FDA–2011–N–0392
207	Administrative Detention of Food	FDA–2011–N–0393
211	Improving the Reportable Food Registry	FDA–2011–N–0394

Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

V. Transcripts

Please be advised that as soon as a transcript is available, it will be accessible at *http://www.regulations.gov* and *http://www.fda.gov/Food/FoodSafety/FSMA/default.htm.* It may be viewed at the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. A transcript will also be available in either hardcopy or on CD–ROM, after submission of a Freedom of Information request. Written requests are to be sent to Division of Freedom of Information (ELEM–1029), Food and Drug Administration, 12420 Parklawn Dr., Rockville, MD 20857.

Dated: May 20, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–13059 Filed 5–25–11; 8:45 am]

BILLING CODE 4160–01–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.

Vaccines for Protection Against Mucosatropic Infections

Description of Invention: The invention offered for licensing and commercial development relates to the field of Vaccines. More specifically, the invention describes novel compositions, strategy and methods that can effectively induce local mucosal immune response (*e.g.* in a female genital tract that is infected with a mucosatropic pathogen), as well as systemic immune response. The method comprises administrating to the treated subject at least two (2) immunogenic compositions in a prime-boost regimen, each comprising an effective amount of an immunogen derived from the pathogen. The first composition is administered to the epithelial surface of the subject in combination with one or more agents or treatment to disrupt the epithelial surface (*e.g.*nonoxobol-9 or depot medroxyprogesterone acetate). The second immunogenic composition is administered systemically. The first composition is typically a papillomavirus pseudovirion (PsV) comprising a polynucleotide that encodes proteins on the mucosatropic pathogen. The PsV has shown to confer tropism for the basal epithelium and is uniquely capable of eliciting strong immune response at this environment. The immunogenic composition that is administered systemically is typically selected from one of the following groups: (a) A live attenuated virus (*e.g.* poxivirus) expressing a protein or proteins of the infecting pathogen, (b) a DNA vector encoding proteins of the pathogen, or (c) an immunogenic polypeptide from the pathogen.

Applications: Vaccines against infectious pathogens, particularly against mucosatropic pathogens and pathogens such as HIV, HCV, HSV or HPV that initiate infection at mucosal sites including the female genital tract.

Advantages:

• The unique properties of the PsV vaccine vectors have shown to confer tropism for the basal epithelium, and are several folds more effective as mucosal vaccines compared with other DNA vaccines such as naked or vectored DNA.

• The use of epithelial disruptive agent enhances the effectiveness of the PsV vaccines in mucosal tissues.

• The unique vaccine compositions and the prime-boost vaccination strategy assure both local (*i.e.* vaginal track) and systemic immunity.

Development Status: Proof of principle has been demonstrated. Animal efficacy data in mice and primates is available.

Market: The market for vaccines against infectious diseases is huge. The present invention is unique as it can be used as a vaccine platform with diverse number of applications and in multiple vaccines. The technology can provide mucosal/local and systemic immunization simultaneously and thus it may prove to be extremely powerful against mucosatropic pathogens. The commercial potential of the present invention is thus vast.

Inventors: Genoveffa Franchini, Christopher B. Buck, John T. Schiller, *et al.* (NCI)

Relevant Publications:

1. Barney S. Graham, John T. Schiller, Christopher B. Buck, Jeffrey N. Roberts, Teresa R. Johnson, John D. Nicewonger, Rhonda C. Kines, and Man Chen. Use of HPV Virus-like Particles to Deliver Gene-based Vaccines. USPA 12/863,572 filed July 19, 2010. Priority date January 19, 2008 (USPA 61/022,324) and PCT/US2009/031600, filed January 21, 2009 (HHS Reference No. E–077–2008/0).

2. CB Buck, DV Pastrana, DR Lowy, JT Schiller. Efficient intracellular assembly of papillomaviral vectors. J Virol. 2004 Jan;78(2):751–757. [PubMed: 14694107].

3. BS Graham, RC Kines, KS Corbett, J Nicewonger, TR Johnson, M Chen, D LaVigne, JN Roberts, N Cuburu, JT Schiller, and CB Buck. Mucosal delivery of human papillomavirus pseudovirus-encapsidated plasmids improves the potency of DNA vaccination. Mucosal Immunol. 2010 Sep;3(5):475–486. [PubMed: 20555315].

Patent Status: U.S. Provisional Application No. 61/447,499 filed 28 Feb 2011 (HHS Reference No. E–112–2011/0–US–01), entitled "Cervicovaginal Vaccination With Papillomavirus Pseudovirions for Protection Against Mucosatropic Infection".

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 Center for Cancer Research, Vaccine Branch, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize Vaccines for Protection Against Mucosatropic Infections. Please contact John Hewes, PhD at 301–435–3121 or *hewesj@mail.nih.gov* for more information.

Peptide Therapeutics for Cardiac Failure

Description of Invention: Available for licensing are therapeutic peptides that induce heart contractions without affecting blood pressure during cardiac failure. During cardiac failure, the heart suffers a decrease in contraction force, which weakens the heart's ability to deliver blood. Interestingly, the failing heart also retains an ability to increase its contraction force. This represents the theoretical basis for treatment of heart failure with positive inotropic agents, which increase heart contractility. Currently available positive inotropic agents include catecholamines such as epinephrine, Milrinone, and beta-receptor agonists. However, these treatments demonstrate negative side effects including increased blood pressure as well as heart attack.

Investigators at the *Eunice Kennedy Shriver* National Institute of Child Health and Human Development have developed therapeutic peptides designated as Serpinin and its derivative pGlu-Serpinin. These peptides act via a signaling pathway independent from the classical receptor-mediated adrenergic pathway and as a result, they can increase heart contractility without affecting blood pressure. These peptides represent a novel pharmacological approach in the treatment of cardiac failure.

Applications: Treatment for cardiac failure.

Advantages: Therapies that increase heart contractions without affecting blood pressure.

Development Status: The technology is currently in the pre-clinical stage of development.

Market:

• In the U.S., cardiac failure affects an estimated 5.7 million people and there are approximately 550,000 newly diagnosed cases per year.

• Cardiac failure was estimated to result in direct and indirect costs of $37.2 billion in the United States in 2009.

• Heart failure is responsible for 11 million physician visits each year, and more hospitalizations than all forms of cancer combined.

Inventors: Y. Peng Loh (NICHD) and Bruno Tota (University of Calabria).

Relevant Publications: None. Future publications are being contemplated.

Patent Status: U.S. Provisional Application No. 61/427,243 filed 27 Dec 2010 (HHS Reference No. E–001–2011/0–US–01).

Licensing Status: Available for licensing.

Licensing Contact: Jennifer Wong; 301–435–4633; *wongje@mail.nih.gov.*

Collaborative Research Opportunity: The *Eunice Kennedy Shriver* National Institute of Child Health and Human Development, Section on Cellular Neurobiology, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize the use of serpinin and pyroglu-serpinin in treatment of heart failure. Please contact Joseph Conrad at 301–435–3107 or *jmconrad@mail.nih.gov* for more information.

Alpha-Glucosidase Chaperones and Inhibitors for Treatment of Pompe Disease and Type 2 Diabetes

Description of Invention: Scientists at the NIH have discovered small molecules that can act as chaperones and correct the misfolding of mutated alpha-glucosidase enzyme. Pompe disease is caused by deficiency or dysfunction of alpha-glucosidase. The only FDA-approved treatment of Pompe disease is enzyme replacement, which in this case costs approximately $300,000 per year and elicits an immune reaction in most patients that limits clinical utility.

In addition, scientists at the NIH have discovered small molecule inhibitors of alpha glucosidase enzyme. Alpha glucosidase converts carbohydrates into monosaccharides. Inhibition of this conversion is useful for type 2 diabetes. Three FDA-approved inhibitors of alpha glucosidase exist but all have low efficacy:side effect ratios.

Applications:

• Therapeutic for Pompe disease.

• Therapeutic for type 2 diabetes.

Advantages:

• Potentially more affordable and less immunogenic than the current therapeutic for Pompe disease.

• Potentially better efficacy:side effect ratios than existing type 2 diabetes therapeutics.

Development Status: Early stage.

Market: Pompe disease occurs in 1 in every 40,000 births (*http://www.ninds.nih.gov/disorders/pompe/pompe.htm*).

Inventors: Juan J. Marugan, Ehud M. Goldin, Noel T. Southall, Wei Zheng, Jingbo Xiao, Ellen Sidransky, and Omid Motabar (NHGRI).

Patent Status: U.S. Provisional Patent Application No. 61/409/697 filed 03 November 2010 (HHS Reference No. E–256–2010/0–US–01).

Licensing Status: Available for licensing.

Licensing Contact: Steve Standley, PhD; 301–435–4074; *sstand@od.nih.gov.*

Mouse IL–12p40 Expressing Cell Line

Description of Invention: The subject invention is a recombinant human 293T cell line that expresses mouse IL–12p40 protein to high levels. IL–12p40 is a subunit of both Interleukin-12 (IL–12) and IL–23; however, it can also be expressed as a monomer (IL–12p40) and as a homodimer (IL–12p80). IL–12p40 is produced mainly by antigen presenting cells such as macrophages, neutrophils, microglia, and dendritic cells in response to pathogens or inflammatory agents. It is an immunostimulatory messenger molecule that can disseminate in the body and signal the presence of a pathogen. The role of IL–12p40 is still being elucidated. This cell line produces and secretes mouse IL–12p40 proteins that have post-translational modifications similar to native IL–12p40 protein, overcoming an issue that is seen with IL–12p40 protein expressed in bacterial, insect, or hamster cells.

Applications: Production of mouse IL–12p40 for research applications.

Advantages: IL–12p40 protein is expressed in human cell line, so post-translational modifications are similar to native protein.

Development Status: In vitro data can be provided upon request.

Market: Research reagent.

Inventors: Nevil J. Singh (NIAID).

Patent Status: HHS Reference No. E–247–2010/0—Research Tool. Patent protection is not being pursued for this technology.

Licensing Status: Available for licensing.

Licensing Contact: Kevin W. Chang, PhD; 301–435–5018, *changke@mail.nih.gov.*

Dated: May 20, 2011.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2011–13084 Filed 5–25–11; 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 Initial Review Group; Function, Integration, and Rehabilitation Sciences Subcommittee.

Date: June 24, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites Hotel, 4300 Military Road, Washington, DC 20015.

Contact Person: Anne Krey, 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, 301–435–6908, *Ak41o@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: May 20, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–13121 Filed 5–25–11; 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 Initial Review Group, Developmental Biology Subcommittee.

Date: June 23–24, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Legacy Hotel and Meeting Center, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Neelakanta Ravindranath, PhD, Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B0G, MSC 7510, Bethesda/Rockville, MD 20817, 301–435–6889, *ravindrn@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: May 20, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–13074 Filed 5–25–11; 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, Pathophysiology of Intellectual and Developmental Disabilities.

Date: June 17, 2011.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Neelakanta Ravindranath, 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, 301–496–1485, *ravindm@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: May 20, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–13070 Filed 5–25–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; 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 the following meeting.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Initial Review Group, Digestive Diseases and Nutrition C Subcommittee.

Date: June 27–28, 2011.

Open: June 27, 2011, 8 a.m. to 8:30 a.m.

Agenda: To review procedures and discuss policy.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Closed: June 27, 2011, 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Closed: June 28, 2011, 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Robert Wellner, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 706, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, *rw175w@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: May 20, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–13069 Filed 5–25–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Amended Notice of Meetings

Notice is hereby given of a change in the meetings of the Interagency Breast Cancer and Environmental Research Coordinating Committee's Research Translation, Dissemination, and Policy Implications (RTDPI) Subcommittee meetings, June 13, 2011, 1 p.m. to 4 p.m. and September 15, 2011, 12 p.m. to 2:30 p.m., NIEHS/National Institutes of Health, Building 4401, East Campus, 79 T.W. Alexander Drive, Research Triangle Park, NC 27709 which was published in the **Federal Register** on May 2, 2011, 72 FR 24893.

This notice is being amended to change the June and September Research Translation, Dissemination, and Policy Implications (RTDPI) Subcommittee meetings to June 14, 2011 from 1 to 4 p.m. and September 13, 2011 from 1 to 4 p.m. The meetings are open to the public.

Dated: May 19, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–13123 Filed 5–25–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Interagency Breast Cancer and Environmental Research Coordinating Committee (IBCERC) Research Process Subcommittee, June 14, 2011, 1 p.m. to 4 p.m., NIEHS/National Institutes of Health, Building 4401, East Campus, 79 T.W. Alexander Drive, Research Triangle Park, NC 27709, which was published in the **Federal Register** on May 3, 2011, 76 FR 24896.

This notice is being amended to change the June Research Process Subcommittee meeting to June 20, 2011, from 1 p.m. to 3 p.m. The meeting is open to the public.

Dated: May 19, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–13122 Filed 5–25–11; 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 Initial Review Group, Reproduction, Andrology, and Gynecology Subcommittee.

Date: June 24, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Legacy Hotel and Meeting Center, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Dennis E. Leszczynski, 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, Rockville, MD 20852, 301–435–2717, *leszczyd@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: May 20, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–13120 Filed 5–25–11; 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, Behavioral Interventions to Prevent HIV.

Date: June 15, 2011.

Time: 11 a.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, Virtual Meeting).

Contact Person: Jose H Guerrier, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892, 301–435–1137, *guerriej@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Fellowships: Biophysical and Physiological Neuroscience.

Date: June 23–24, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Washington Marriott Wardman Park Hotel, 2660 Woodley Road, NW., Washington, DC 20008.

Contact Person: Paek-Gyu Lee, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5196, MSC 7812, Bethesda, MD 20892, (301) 613–2064, *leepg@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business: Neuropharmacology.

Date: June 23–24, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Mayflower Park Hotel Seattle, 405 Olive Way, Seattle, WA 98101.

Contact Person: Aidan Hampson, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5199, MSC 7850, Bethesda, MD 20892, (301) 435–0634, *hampsona@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Fellowships: Brain Disorders and Related Neuroscience.

Date: June 23–24, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Dupont Circle Hotel, 1500 New Hampshire Avenue, NW., Washington, DC 20036.

Contact Person: Vilen A Movsesyan, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4040M, MSC 7806, Bethesda, MD 20892, 301–402–7278, *movsesyanv@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business: Drug Discovery and Development.

Date: June 23–24, 2011.

Time: 7 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Beacon Hotel and Corporate Quarters, 1615 Rhode Island Avenue, NW., Washington, DC 20036.

Contact Person: Ross D Shonat, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6172, MSC 7892, Bethesda, MD 20892, 301–435–2786, *ross.shonat@nih.hhs.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Pathogenic Bacteria.

Date: June 28–29, 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: Soheyla Saadi, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3211, MSC 7808, Bethesda, MD 20892, 301–435–0903, *saadisoh@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Fellowships: Sensory, Motor, and Cognitive Neuroscience.

Date: June 30–July 1, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott Baltimore Waterfront, 700 Aliceanna Street, Baltimore, MD 21202.

Contact Person: Yuan Luo, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5207, MSC 7846, Bethesda, MD 20892, 301–827–7915, *luoy2@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: May 19, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–13108 Filed 5–25–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; 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: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Genetics Ancillary Study.

Date: June 17, 2011.

Time: 4 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Maria E. Davila-Bloom, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 758, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7637, *davila-bloomm@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Epidemiology of Diabetes.

Date: August 2, 2011.

Time: 10 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Thomas A. Tatham, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 760, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–3993, *tathamt@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: May 18, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–13082 Filed 5–25–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, June 8, 2011, 1 p.m. to June 8, 2011, 3 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 which was published in the **Federal Register** on May 18, 2011, 76 FR 28793–28794.

The meeting will be held July 11, 2011. The meeting time and location remain the same. The meeting is closed to the public.

Dated: May 20, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–13079 Filed 5–25–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Alternative Medicine; 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 Center for Complementary and Alternative Medicine

Special Emphasis Panel, Mind/Body and Manual Therapy Translational Tools.

Date: June 24, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Hungyi Shau, PhD, Scientific Review Officer, National Center for Complementary and Alternative Medicine, National Institutes of Health, 6707 Democracy Boulevard, Suite 401, Bethesda, MD 20892, 301–402–1030, *Hungyi.Shau@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.213, Research and Training in Complementary and Alternative Medicine, National Institutes of Health, HHS).

Dated: May 20, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–13078 Filed 5–25–11; 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: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Neural Oxidative Metabolism and Death Study Section.

Date: June 20, 2011.

Time: 8 a.m. to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: InterContinental Chicago Hotel, 505 North Michigan Avenue, Chicago, IL 60611.

Contact Person: Carol Hamelink, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4192, MSC 7850, Bethesda, MD 20892, (301) 213–9887, *hamelinc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowship: Surgical Sciences, Biomedical Imaging and Bioengineering.

Date: June 23, 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 (Virtual Meeting).

Contact Person: Weihua Luo, MD, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5114, MSC 7854, Bethesda, MD 20892, 301–435–1170, *luow@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Adult Psychopathology and Disorders of Aging.

Date: June 27, 2011.

Time: 12 p.m. to 2 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: Melissa Gerald, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3172, MSC 7848, Bethesda, MD 20892, (301) 408–9107, *geraldmel@csr.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: May 20, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–13110 Filed 5–25–11; 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, Pediatrics Subcommittee.

Date: June 23, 2011.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Legacy Hotel and Meeting Center, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Rita Anand, 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, 301–496–1487, *anandr@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: May 20, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–13115 Filed 5–25–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3322–EM; Docket ID FEMA–2011–0001]

Louisiana; Amendment No. 2 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of the emergency declaration for the State of Louisiana (FEMA–3322–EM), dated May 6, 2011, and related determinations.

DATES: *Effective Date:* May 17, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of an emergency declaration for the State of Louisiana is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared an emergency by the President in his declaration of May 6, 2011.

The parishes of East Feliciana, Franklin, Lafourche, and Richland for emergency protective measures (Category B), including direct Federal assistance, under the Public Assistance program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–13031 Filed 5–25–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1975–DR; Docket ID FEMA–2011–0001]

Arkansas; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Arkansas (FEMA–1975–DR), dated May 2, 2011, and related determinations.

DATES: *Effective Date:* May 16, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Arkansas is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of May 2, 2011.

Cross, Greene, Independence, Jackson, Lawrence, Lonoke, Mississippi, Monroe, Prairie, and Woodruff Counties for Individual Assistance.

Baxter, Boone, Calhoun, Chicot, Clark, Cleburne, Cleveland, Crittenden, Cross, Dallas, Franklin, Fulton, Greene, Howard, Independence, Izard, Johnson, Lawrence, Madison, Marion, Nevada, Newton, Perry, Pike, Polk, Searcy, Sharp, Van Buren, White, and Yell Counties for Public Assistance (Categories A–G), including direct Federal Assistance.

Clay, Lincoln, Randolph, and Saline Counties for Public Assistance [Categories A–G], including direct Federal Assistance, (already designated for Individual Assistance and assistance for emergency protective measures [Category B], limited to direct Federal assistance).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–13030 Filed 5–25–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1972–DR; Docket ID FEMA–2011–0001]

Mississippi; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Mississippi (FEMA–1972–DR), dated April 29, 2011, and related determinations.

DATES: *Effective Date:* May 18, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Mississippi is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of April 29, 2011.

Alcorn, Attala, Clay, DeSoto, Holmes, Marshall, Montgomery, Newton, Panola, Quitman, Smith, Tishomingo, Tunica, and Winston for Public Assistance (already designated for Individual Assistance).

Benton, Calhoun, Carroll, Itawamba, Lee, Noxubee, Prentiss, Scott, Tate, Tippah, and Union Counties for Public Assistance.

Chickasaw, Choctaw, Clarke, Greene, Hinds, Jasper, Kemper, Lafayette, Monroe, Neshoba, and Webster Counties for Public Assistance [Categories C–G], (already designated for Individual Assistance and assistance for debris removal and emergency protective measures [Categories A and B], including direct Federal assistance, under the Public Assistance program).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–13033 Filed 5–25–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1976–DR; Docket ID FEMA–2011–0001]

Kentucky; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Kentucky (FEMA–1976–DR), dated May 4, 2011, and related determinations.

DATES: *Effective Date:* May 17, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the

Commonwealth of Kentucky is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of May 4, 2011.

Butler, Caldwell, Calloway, Edmonson, Elliott, Graves, Logan, Lyon, Monroe, Todd, and Trigg Counties for Public Assistance, including direct Federal Assistance.

Fulton, and Union Counties for Public Assistance (already designated for emergency protective measures [Category B], limited to direct Federal assistance, under the Public Assistance program).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–13034 Filed 5–25–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1971–DR; Docket ID FEMA–2011–0001]

Alabama; Amendment No. 13 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Alabama (FEMA–1971–DR), dated April 28, 2011, and related determinations.

DATES: *Effective Date:* May 17, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Alabama is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of April 28, 2011.

Lamar and Tuscaloosa Counties for Public Assistance [Categories C–G], (already designated for Individual Assistance and assistance for debris removal and emergency protective measures [Categories A and B], including direct Federal assistance, under the Public Assistance program).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–13032 Filed 5–25–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form G–845 and Form G–845 Supplement, Revision of a Currently Approved Information Collection; Comment Request

ACTION: 30-Day Notice of Information Collection under Review: Form G–845 and Form G–845 Supplement, Document Verification Request and Document Verification Request Supplement; OMB Control No. 1615–0101.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on February 22, 2011, at 76 FR 9805, allowing for a 60-day public comment period. USCIS received two comments for this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until June 27, 2011. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), and to the Office of Management and Budget (OMB) USCIS Desk Officer. Comments may be submitted to: USCIS, Chief, Regulatory Products Division, Office of the Executive Secretariat, 20 Massachusetts Avenue, NW., Washington, DC 20529–2020. Comments may also be submitted to DHS via facsimile to 202–272–0997 or via e-mail at *rfs.regs@dhs.gov,* and to the OMB USCIS Desk Officer via facsimile at 202–395–5806 or via e-mail at *oira_submission@omb.eop.gov.* When submitting comments by e-mail, please make sure to add OMB Control Number 1615–0101 in the subject box.

Note: The address listed in this notice should only be used to submit comments concerning the revision of this information collection. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check "My Case Status" online at: *https://egov.uscis.gov/cris/Dashboard.do,* or call the USCIS National Customer Service Center at 1–800–375–5283 (TTY 1–800–767–1833).

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a currently approved information collection.

(2) *Title of the Form/Collection:* Document Verification Request and Document Verification Request Supplement.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form G–845 and Form G–845 Supplement. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or Households. These forms were developed to facilitate communication between all benefit-granting agencies and USCIS to ensure that basic information required to assess status verification requests is provided.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Form G–845—248,206 responses at 5 minutes (0.83 hours) per response; Form G–845 Supplement—11,247 responses at 5 minutes (0.83 hours) per response; and Automated Queries—11,839,892 responses at 5 minutes (0.83 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 1,004,246 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please visit the USCIS Web site at: *http://www.regulations.gov/search/index.jsp.*

We may also be contacted at: USCIS, Regulatory Products Division, 20 Massachusetts Avenue, NW., Washington, DC 20529–2020, telephone number 202–272–8377.

Dated: May 23, 2011.

Sunday Aigbe,

Chief, Regulatory Products Division, Office of the Executive Secretariat, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2011–13090 Filed 5–25–11; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLORS00100 63500000 DF0000 LXSS047H0000; HAG11–0218]

Notice of Public Meeting, Salem District Resource Advisory Committee Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Public Meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Salem District Resource Advisory Committee (RAC) will meet as indicated below.

DATES: June 16, 2011, 8:30 a.m. to 4 p.m., Salem, OR.

ADDRESSES: BLM Salem District Office, 1717 Fabry Road, SE., Salem, OR 97306.

FOR FURTHER INFORMATION CONTACT: Program information, meeting records, and a roster of committee members may be obtained from Richard Hatfield, BLM Salem District Designated Official, 1717 Fabry Road, SE., Salem, OR 97306—(503) 375–5682. The meeting agenda will be posted at: *http://www.blm.gov/or/districts/salem/rac.* Should you require reasonable accommodation, please contact the BLM Salem District—(503) 375–5682 as soon as possible. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The Resource Advisory Committee will consider proposed projects for Title II funding under Section 205 of the Secure Rural Schools and Community Self Determination Act of 2000 (Pub. L. 110–343) that focus on maintaining or restoring water quality, land health, forest ecosystems, and infrastructure.

Miles R. Brown,

BLM Salem District Manager.

[FR Doc. 2011–13046 Filed 5–25–11; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CACA–449834; L51010000.ER0000 LVRWB09B3160 LLCAD09000]

Notice of Availability of the Record of Decision for Southern California Edison's Eldorado Ivanpah Transmission Project

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: The Bureau of Land Management (BLM) announces the availability of the Record of Decision (ROD) for the Eldorado Ivanpah Transmission Project (EITP) located in San Bernardino County, California, and Clark County, Nevada. The BLM Needles Field Manager signed the ROD on May 19, 2011, which constitutes the final decision of the BLM.

ADDRESSES: Copies of the ROD have been sent to affected Federal, state, and local government agencies and to other stakeholders and are available at the BLM's Needles Field Office, 1303 South Highway 95, Needles, California 92363 or at the following *Web site: http://www.blm.gov/ca/st/en/prog/energy/fasttrack/Eldorado_Ivanpah/fedstatus.html.*

FOR FURTHER INFORMATION CONTACT: Tom Hurshman, Project Manager, telephone: (970) 240–5345; address: 2465 South Townsend Avenue, Montrose, Colorado 81401; or e-mail: *caeitp@blm.gov.* Persons who use a telecommunications device for the deaf may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: Southern California Edison (SCE) filed an application under Title V of the Federal Land Policy and Management Act (43 U.S.C. 1761) (FLPMA) for a right-of-way (ROW) authorization on BLM managed lands to upgrade and replace an existing 115-kilovolt (kV) transmission line on public lands with a new double circuit 230-kV transmission line in compliance with FLPMA, BLM Right of Way (ROW) regulations, and other applicable Federal laws. The upgraded transmission line would extend approximately 35 miles from southern Clark County, Nevada, into northeastern San Bernardino County, California. About 28 miles of the project would be

in Nevada and about 7 miles of the project would be in California. The project also includes a new Ivanpah substation in California near Primm, Nevada, which would serve as a connector hub for solar energy generated in the Ivanpah Valley area. A fiber optics telecommunications cable will be located on the new transmission towers and an additional fiber optics pathway ROW is also approved. The EITP ROW grant will impact approximately 480 acres during construction.

The BLM conducted a joint environmental review of EITP with the California Public Utilities Commission (CPUC). A Notice of Availability for a joint Final Environmental Impact Statement (EIS)/Environmental Impact Report (EIR) was published in the **Federal Register** by the BLM on December 21, 2010. The CPUC published a final decision on December 27, 2010, approving the Final EIS/EIR Environmentally Preferred Route and issued a Certificate of Public Convenience and Necessity (CPNC). The CPNC included all recommended mitigation measures from the Final EIS/EIR. The BLM's Preferred Alternative is the same as the CPUC Environmentally Preferred Route and was selected in the ROD. The BLM has adopted all mitigation measures recommended in the Final EIS/EIR. The project area is managed by the BLM in accordance with the California Desert Conservation Area Plan and the Las Vegas Field Office Resource Management Plan. The Preferred Alternative is consistent with the California Desert Conservation Area Plan and the Las Vegas Field Office Resource Management Plan.

Any party adversely affected by this decision may appeal within 30 days of the date of the ROD pursuant to 43 CFR part 4, subpart E. The appeal should state the specific portions of the decision that are being appealed. The appeal must be filed with the Needles Field Manager at the above listed address. According to regulation, BLM decisions issued under 43 CFR part 2800 are and remain in effect pending appeal (43 CFR 2801.10(b)). Please consult the appropriate regulations (43 CFR part 4, subpart E) for further requirements.

Authority: 40 CFR 1506.6.

Thomas Pogacnik,

Deputy State Director.

[FR Doc. 2011–12992 Filed 5–25–11; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

National Park Service

[5298–AM43–EXR]

Notice of Intent To Prepare an Environmental Impact Statement for the Acquisition of Land Currently Owned by Florida Power and Light Company in Everglades National Park, Florida

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement for the acquisition of land currently owned by Florida Power and Light Company in Everglades National Park, Florida.

SUMMARY: In June 2009, the National Park Service (NPS) initiated public scoping for an environmental assessment (EA) that was being prepared in accordance with the National Environmental Policy Act of 1969 (NEPA), as amended, to evaluate the environmental impacts of a potential land acquisition or exchange between NPS and Florida Power and Light Company (FPL) in Everglades National Park (Park). The NPS decision to be made at the conclusion of the process was to have been whether to exchange NPS lands for FPL's lands within the boundary of the Park or to acquire FPL's lands by purchase or eminent domain. After careful consideration of the issues and analysis developed during the EA process, the NPS has determined that there is potential for significant impacts to the human environment from this decision, and NPS therefore intends to prepare an environmental impact statement (EIS). This notice initiates the public scoping process to solicit public comments and identify issues regarding the potential land acquisition or land exchange in the Park.

DATES: Interested individuals, organizations, and agencies are encouraged to provide written comments or suggestions to assist the NPS in determining the scope of issues to be addressed in the EIS, identifying significant issues related to the potential land acquisition or exchange, identifying conditions for the exchange, and identifying other reasonable alternatives. The NPS will conduct a public scoping meeting to be held in Miami-Dade County. When the public scoping meeting has been scheduled, its location, date, and time will be published in local media and on the NPS's Planning, Environment and Public comment Web site: *http://parkplanning.nps.gov/ever.* The scoping meeting will also be announced via a park press release and through e-mail notification to the individuals and organizations on the park's mailing list. Written comments must be received prior to the close of the scoping period or 15 days after the last public meeting, whichever is later. The NPS will provide additional opportunities for public participation upon publication of the draft EIS.

ADDRESSES: If you wish to provide scoping comments or suggestions, you may submit your comments by any one of several methods. The preferred method for submitting comments is via the internet at *http://parkplanning.nps.gov/ever.* Select "Acquisition of Florida Power and Light Company Lands in the East Everglades Expansion Area" to reach the comment site. Written comments may also be sent to: National Park Service, Denver Service Center—Planning Division, Attn: FPL Project Planning Team, P.O. Box 25287, Denver, CO 80225–0287.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. We will always make submissions from organizations or businesses, and from individuals identifying themselves as representatives of or officials of organizations or businesses, available for public inspection in their entirety.

SUPPLEMENTARY INFORMATION: Everglades National Park was established on December 6, 1947. Subsequently the Everglades National Park Protection and Expansion Act of 1989 (the 1989 Act): (1) Expanded the boundaries of the Park to include approximately 107,600 acres, and through the 1989 Act and additional legislation, authorized the NPS and U.S. Army Corps of Engineers (ACOE) to acquire lands within the designated area, which is known as the Everglades National Park Expansion Area (ENP Expansion Area); and (2) authorized the Secretary of the Army to modify the Central and Southern Florida Project to provide for the restoration of more natural water flow and habitat to and within the Park. The ENP Expansion Area includes property owned by FPL since the 1960's and early 1970's (FPL Property). The FPL Property is approximately 7.4 miles in length (North-South), 330 feet to 370 feet wide, and encompasses

approximately 320 acres. More recently, the Omnibus Public Land Management Act of 2009 specifically authorized the Secretary of Interior to acquire the FPL Property in exchange for other lands in the Park. The property proposed for the exchange consists of approximately 260 acres within and along the eastern boundary of the ENP Expansion Area with an additional easement over approximately 90 acres in the Park for the control of non-native vegetation.

To implement the land acquisition provisions of the 1989 Act, the Park developed a Land Protection Plan in 1991 (the LPP). The LPP determined the need for acquisition of lands necessary to assure the enhancement and restoration of natural hydrologic conditions in the area and to manage the area to maintain natural abundance, diversity, and ecological integrity of native plants and animals. To implement the restoration of flow provisions of the 1989 Act, the ACOE issued a 1992 General Design Memorandum and related updates concerning the project modifications necessary to achieve more natural water flow. The latest of these modifications is the construction of a one-mile bridge on the Tamiami Trail, which is scheduled to be complete in 2013. Related to the construction of the one-mile bridge and the broad restoration objectives in the Act, the ACOE will develop an operational plan to provide a more natural flow of water to the ENP Expansion Area. The additional water flow that will result from implementation of this plan cannot be achieved until lands that FPL owns in Everglades National Park are acquired.

As a related but distinct matter, FPL is seeking approval, through the Nuclear Regulatory Commission (NRC), ACOE, and the State of Florida, to construct two additional nuclear reactors at its Turkey Point facility, immediately adjacent to Biscayne National Park in south Florida. The NRC is currently preparing an EIS for a new FPL license for the proposed reactors. The FPL is also seeking certification from the Florida Department of Environmental Protection of new transmission corridors, including a West Preferred Corridor, for transmission of electricity from the Turkey Point Facility to destinations in south Florida. The current FPL proposal for the West Preferred Corridor includes the potential construction of three electrical transmission lines on the FPL Property in the ENP Expansion Area or on the NPS lands that would be conveyed to FPL by the proposed exchange.

Having determined that utilization of the FPL property for an electrical transmission corridor in its current location is contrary to the LPP and intended purposes of the ENP Expansion Area, the NPS began an analysis of the potential land acquisition or exchange in an EA in June 2009. Following public scoping and review of the preliminary EA findings, NPS identified potential environmental impacts associated with the reasonably foreseeable construction of transmission lines on the exchange lands. After careful consideration of the issues and analysis developed during the EA process, the NPS has determined that implementation of a land exchange with FPL could result in potential significant impacts to the human environment and that an EIS will be prepared. The EIS will examine the environmental impacts of transmission lines on the proposed exchange property as well as the foreseeable environmental impacts of the alternative actions.

The NPS has identified three potential alternatives for analysis in the EIS. The first alternative, land exchange with conditions, would evaluate the effects of the statutorily-authorized land exchange and consider appropriate conditions for the exchange. Direct effects of the changes in land ownership would probably be minimal, but the cumulative effects analysis would evaluate the potential effects of power line construction and maintenance for utility corridor purposes on the exchange lands. The second alternative, acquisition/condemnation, would evaluate the effects of acquiring or condemning FPL's property in the park, and thereby removing the potential for power line construction on the FPL property or on the proposed exchange property. Inclusion of this alternative will assist in determining a baseline of existing impacts for comparison with the impacts of other alternatives. The third alternative, no acquisition or exchange, would evaluate the effects as if there were no change in the status of the FPL Property and would assume that the status quo of FPL ownership is maintained. The cumulative effects analysis would evaluate the foreseeable effects if power lines were constructed on the FPL Property through the Park.

FOR FURTHER INFORMATION CONTACT: Information about the proposed action, the EIS, and the scoping process may be obtained from Mr. Brien Culhane at Everglades National Park by phone at 305–242–7717 or via e-mail at *Brien_Culhane@nps.gov.* Additional information, including maps of the FPL Property and proposed transmission corridors, can be found on the NPS Planning, Environment, and Public Comment (PEPC) Web site, *http://parkplanning.nps.gov/ever.* Select "Acquisition of Florida Power and Light Company Lands in the East Everglades Expansion Area."

Authority: The authority for publishing this notice is contained in 40 CFR 1506.6

The responsible official for this Notice of Intent is the Regional Director, Southeast Region, NPS, 100 Alabama Street, SW., 1924 Building, Atlanta, Georgia 30303.

Dated: May 19, 2011.

Gordon Wissinger,

Acting Regional Director, Southeast Region.

[FR Doc. 2011–13114 Filed 5–25–11; 8:45 am]

BILLING CODE 4310–XH–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OMB Number 1121–0102]

Agency Information Collection Activities: Existing Collection; Comments Requested: Prison Population Reports: Summary of Sentenced Population Movement—National Prisoner Statistics, Extension and Revision of Existing Collection

ACTION: 30-Day Notice of Information Collection under Review.

The Department of Justice (DOJ), Office of Justice Programs, will be submitting the following information collection to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was published in the **Federal Register** Volume 76, Number 50, page 14073 on March 15, 2011, allowing for a 60 day public comment period.

The purpose of this notice is to allow an additional 30 days for public comments until June 27, 2011. This process is in accordance with 5CRF 1320.10.

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 Paul Guerino at 202–307–0349 or the DOJ Desk Officer at 202–395–3176.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following points:

(1) Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension and minor revision currently approved collection.

(2) *Title of the Form/Collection:* Summary of Sentenced Population Movement—National Prisoner Statistics

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form number: NPS–1B. Office of Justice Programs, U.S. Department of Justice.

(4) *Affected public who will be asked to respond, as well as a brief abstract:* Primary: State Departments of Corrections. Others: The Federal Bureau of Prisons. For the NPS–1B form, 51 central reporters (one from each and the Federal Bureau of Prisons) responsible for keeping records on inmates will be asked to provide information for the following categories:

(a) As of December 31, the number of male and female inmates within their custody and under their jurisdiction with maximum sentences of more than one year, one year or less; and unsentenced inmates;

(b) The number of inmates housed in privately operated facilities, county or other local authority correctional facilities, or in other state or Federal facilities on December 31;

(c) Prison admission information in the calendar year for the following categories: new court commitments, parole violators, other conditional release violators returned, transfers from other jurisdictions, AWOLs and escapees returned, and returns from appeal and bond;

(d) Prison release information in the calendar year for the following categories: expirations of sentence, commutations, other conditional releases, probations, supervised mandatory releases, paroles, other conditional releases, deaths by cause, AWOLs, escapes, transfers to other jurisdictions, and releases to appeal or bond;

(e) Number of inmates under jurisdiction on December 31 by race and Hispanic origin;

(f) Number of inmates in custody classified as non-citizens and/or under 18 years of age;

(g) Testing of incoming inmates for HIV; and HIV infection and AIDS cases on December 31; and

(h) The aggregate rated, operational, and design capacities, by sex, of each State's correctional facilities at year-end.

The Bureau of Justice Statistics uses this information in published reports and for the U.S. Congress, Executive Office of the President, practitioners, researchers, students, the media, and others interested in criminal justice statistics.

(5) *An estimate of the total number of respondents and the amount of time needed for an average respondent to respond to both forms:* 51 respondents each 6.5 hours for the NPS–1B. Burden hours are down by 76 hours since the last clearance because we are eliminating the NPS–1A midyear counts to reduce redundancy. We plan to establish a series of rotating short forms to replace the NPS–1A which will collect data on special topics, such as mental health, medical problems, and reentry, but these forms are in the working stages. A supplemental approval and burden adjustment will be sought through OMB when the materials are ready for review.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 332 annual burden hours.

If additional information is required contact: Mrs. Lynn Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street, NE., Room 2E–808, Washington, DC 20530.

Dated: May 23, 2011.

Lynn Murray,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2011–13095 Filed 5–25–11; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

National Institute of Corrections

Advisory Board Meeting

Time and Date: 8 a.m. to 4:30 p.m. on Monday, June 27, 2011; 8 a.m. to 4:30 p.m. on Tuesday, June 28, 2011.

Place: National Corrections Academy, 11900 East Cornell Avenue, Aurora, CO 80014, 1 (303) 338–6600.

Matters To Be Considered: Director's report; Discussion on NIC Board Hearings; Federal Partners Reports; Presentations and Demonstration by Academy Staff and Information Center Staff; Reopening Ceremony of the National Corrections Academy.

Contact Person for More Information: Thomas Beauclair, Deputy Director, 202–307–3106, ext. 44254.

Morris L. Thigpen,

Director.

[FR Doc. 2011–12818 Filed 5–25–11; 8:45 am]

BILLING CODE 4410–36–M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Vendor Outreach Session Information Management System

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Office of the Assistant Secretary for Administration and Management (OASAM) sponsored information collection request (ICR) titled, "Vendor Outreach Session Information Management System," to the Office of Management and Budget (OMB) for review and approval for continued use in accordance with the Paperwork Reduction Act (PRA) of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35).

DATES: Submit comments on or before June 27, 2011.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/*

public/do/PRAMain, on the day following publication of this notice or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an e-mail to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor, Office of the Assistant Secretary for Administration and Management, Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–6929/Fax: 202–395–6881 (these are not toll-free numbers), e-mail: *OIRA_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by e-mail at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: The Vendor Outreach Session Information Management System is needed to gather documents and manage identifying information for DOL constituency groups such as small businesses and trade associations. The information is used by DOL agencies to maximize communication with the respective constituency groups regarding relevant DOL programs, initiatives and procurement opportunities; to track and solicit feedback on customer service to group members; and to facilitate registration of group members for certain DOL-sponsored activities.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid OMB control number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under OMB Control Number 1290–0002. The current OMB approval is scheduled to expire on May 31, 2011; however, it should be noted that information collections submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on March 8, 2011 (76 FR 12757).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should reference OMB Control Number 1290–0002. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: Office of the Assistant Secretary for Administration and Management (OASAM).

Title of Collection: Vendor Outreach Session Information Management System.

OMB Control Number: 1290–0002.

Affected Public: Private Sector—Businesses or other for-profits, not-for-profit institutions.

Total Estimated Number of Respondents: 1000.

Total Estimated Number of Responses: 2000.

Total Estimated Annual Burden Hours: 150.

Total Estimated Annual Other Costs Burden: $0.

Dated: May 20, 2011.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2011–13065 Filed 5–25–11; 8:45 am]

BILLING CODE 4510–23–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Internal Fraud Activities

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the revised Employment and Training Administration (ETA) sponsored information collection request (ICR) titled, "Internal Fraud Activities," to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35).

DATES: Submit comments on or before June 27, 2011.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the *RegInfo.gov* Web site, *http://www.reginfo.gov/public/do/PRAMain,* on the day following publication of this notice or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an e-mail to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, *Attn:* OMB Desk Officer for the Department of Labor, Employment and Training Administration (ETA) Office of Management and Budget, Room 10235, Washington, DC 20503, *Telephone:* 202–395–6929/*Fax:* 202–395–6881 (these are not toll-free numbers), *e-mail: OIRA_submission@omb.eop.gov.*

FOR FURTHER INFORMATION: Contact Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by e-mail at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: The ETA proposes to revise Form ETA–227 to collect information about internal unemployment insurance (UI) program fraud and overpayment detection and recovery activities from the States. To streamline UI program reporting in general, the ETA proposes to merge a few cells from Form ETA–9000 into Form ETA–227. Merging the forms requires a corresponding change to merge the OMB Control Numbers.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not

display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under OMB Control Number 1205–0187. The current OMB approval is scheduled to expire on May 31, 2011; however, it should be noted that existing information collections submitted to the OMB receive a month-to-month extension while they undergo review. Revisions would not take effect during this review period. For additional information, see the related notice published in the **Federal Register** on January 28, 2011 (76 FR 5212).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should reference OMB Control Number 1205–0187. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: Employment and Training Administration (ETA).

Title of Collection: Internal Fraud Activities.

OMB Control Numbers: 1205–0187 (proposed to be merged with 1205–0173).

Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Respondents: 53.

Total Estimated Number of Responses: 212.

Total Estimated Annual Burden Hours: 4240.

Total Estimated Annual Other Costs Burden: $0.

Dated: May 20, 2011.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2011–13066 Filed 5–25–11; 8:45 am]

BILLING CODE 4510–FW–P

NATIONAL SCIENCE FOUNDATION

National Science Board; Sunshine Act Meetings; Notice

The National Science Board's Committee on Programs and Plans (CPP) Task Force on Unsolicited Mid-Scale Research (MS), pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of a workshop/meeting for the transaction of National Science Board business and other matters specified, as follows:

DATE AND TIME: June 6, 8 a.m.–5:45 p.m. EDT; June 7, 11 a.m.–12:45 p.m. E.D.T.

SUBJECT MATTER: The Task Force on Unsolicited Mid-Scale Research is holding a workshop with invited stakeholders (researchers, university administrators, NSF management and staff, and representatives from other Federal Agencies) to gather input relevant to the policy objectives of the Task Force as defined by the charge (see here: *http://www.nsf.gov/nsb/committees/tskforce_ms_charge.jsp*). The provisional agenda is as follows:

Monday, June 6

8—Welcome, Workshop Process, and Participant Introductions.
8:30–10:30—Session I: What do we know about unsolicited mid-scale research at NSF? Summary from data gathering activities.
10:45–1:45—Session II: What are the main obstacles for unsolicited mid-scale research at NSF?
12:30—Continuation of Session II over Lunch.

Lunch is provided for invited guests only. However, NSF staff and members of the public are welcome to attend the luncheon discussion.

1:45–3:30—Session III: What scientific progress can be achieved through unsolicited and topically broad solicited mid-scale research opportunities?
3:45–5:30—Session IV: Potential solutions for overcoming the obstacles: Setting the stage for the Tuesday breakout sessions.
5:30–5:45—Wrap-Up and Adjourn for the Day.

Tuesday, June 7

11–12:30—Group Discussion of Breakout Sessions.
12:30—Wrap-Up & Next Steps for the Task Force.
12:45—Adjourn.

STATUS: Open.

LOCATION: This meeting will be held in the National Science Board room (1235) at the National Science Foundation, 4201Wilson Blvd., Arlington, VA 22230. All visitors must contact the Board Office [call 703–292–7000 or send an e-mail message to *nationalsciencebrd@nsf.gov*] at least 24 hours prior to the meeting. Please provide name and organizational affiliation. All visitors must report to the NSF visitor desk located in the lobby at the 9th and N. Stuart Streets entrance on the day of the meeting to receive a visitor's badge.

UPDATES AND POINT OF CONTACT: Please refer to the National Science Board Web site *http://www.nsf.gov/nsb* for additional information and schedule updates (time, place, subject matter or status of meeting) may be found at *http://www.nsf.gov/nsb/notices/. Point of contact for this meeting:* Dr. Matthew B. Wilson, National Science Board Office, 4201Wilson Blvd., Arlington, VA 22230. *Telephone:* (703) 292–7000.

Ann Ferrante,

Writer/Editor.

[FR Doc. 2011–13157 Filed 5–24–11; 11:15 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–413 and 50–414; NRC–2011–0116]

Duke Energy Carolinas, LLC; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission, NRC) has granted the request of Duke Energy Carolinas, LLC (the licensee) to withdraw its May 20, 2010, application, as supplemented by letter dated January 19, 2011, for proposed amendment to Renewed Facility Operating License Nos. NPF–35 and NPF–52 for the Catawba Nuclear Station, Unit Nos. 1 and 2, located in York County, South Carolina.

The proposed amendment would have revised the Technical Specifications to allow the reactor building pressure boundary to be opened under administrative controls.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on January 25 (76 FR 4383). However, by letter dated February 2, 2011, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated May 20, 2010, as supplemented by letter dated January 19, 2011, and the licensee's letter dated February 2, 2011, which withdrew the application for license amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available documents created or received at the NRC are available online in the NRC library *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to the Agencywide Documents Access and Management System (ADAMS) or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by e-mail to *pdr.resource@nrc.gov*.

Dated at Rockville, Maryland this 19th day of May 2011.

For the Nuclear Regulatory Commission.

Jon Thompson,

Project Manager, Plant Licensing Branch II–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2011–13053 Filed 5–25–11; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64525; File No. SR–NYSEArca–2011–30]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Its Rules To Remove the Concept of an "Odd Lot Dealer"

May 19, 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 May 12, 2011, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules to remove the concept of an "Odd Lot Dealer." The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, *http://www.nyse.com,* and the Commission's Web site at *http://www.sec.gov*.

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

NYSE Arca Equities proposes to amend its rules to remove the concept of an Odd Lot Dealer.

An Odd Lot Dealer is any Market Maker who has agreed to buy and sell securities in odd lots (*i.e.,* orders less than 100 shares) at the Best Protected Bid and the Best Protected Offer throughout the duration of Core Trading Hours and who is registered as an Odd Lot Dealer in accordance with NYSE Arca Equities Rule 7.25.

Before August 13, 2009, the Exchange charged $0.03 per share for odd lot orders executed against orders residing in the book in Tape A and Tape B securities, and $0.0035 per share for Tape C securities and paid a $0.02 per share credit to Market Makers that executed against an odd lot order.[4] The Exchange also had odd lot pricing associated with odd lots routed to different market centers.[5] As of August 13, 2009, the Exchange eliminated this differential odd lot pricing structure and thereafter charged and credited ETP Holders executing odd lots in the same way that it charged and credited them for round-lot executions, thereby simplifying the Exchange's fee structure.[6] Thereafter, in November 2009, the Exchange eliminated the requirement that for each security in which a Market Maker was registered as a Lead Market Maker ("LMM"), the LMM also was required to register as an Odd Lot Dealer in that security.[7] Thereafter, LMMs could choose to register as an Odd Lot Dealer, but were not be required to do so.

Since March 2010, no Market Maker has maintained a registration as an Odd Lot Dealer. Because (1) Exchange systems can process odd lot orders and they are treated the same as round lot and mixed lot orders for purposes of ranking and execution, (2) there is no financial incentives or requirements to act as an Odd Lot Dealer, and (3) there currently is no ETP Holder acting as an Odd Lot Dealer, the Exchange believes that it is appropriate to eliminate the concept of Odd Lot Dealer from its rules. As such, the proposed rule change eliminates the description of an Odd Lot Dealer (or references to rules relating to Odd Lot Dealers) and make conforming changes in NYSE Arca Equities Rules 1.1, 7.25, 7.31, 7.38, 10.12 and 10.13.[8]

In addition, the Exchange proposes to delete Rule 7.38(c) which prohibits ETP Holders from: (i) Combining odd lot orders given by different customers into a round lot order or orders unless specifically requested to do so by the customers giving the orders; (ii) unbundling round lots for the purpose of entering odd lot limit orders in comparable amounts; (iii) failing to aggregate odd lot orders into round lots when such orders are for the same account or for various accounts in which there is a common monetary interest; and (iv) entering both buy and sell odd lot limit orders in the same stock before one of the orders is executed for the purpose of capturing the spread in the stock. The Exchange proposes to delete these requirements because the issues associated with such odd lot orders are moot now that the Exchange's systems can process odd lot orders in the same manner as round lot

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Exchange Act Release No. 60495 (Aug. 13, 2009), 74 FR 41957 (August 19, 2009) (SR–NYSEArca–2009–72).

[5] *Id.* at 41958.

[6] *Id.*

[7] *See* Exchange Act Release No. 61025 (November 18, 2009), 74 FR 61726 (November 25, 2009) (SR–NYSEArca–2009–102).

[8] To add clarity, Rule 7.37 also would be amended to provide that round lot, mixed lot and odd lot orders shall be treated in the same manner in the NYSE Arca Marketplace.

and mixed lot orders for purposes of ranking and execution.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the "Act"),[9] in general, and furthers the objectives of Section 6(b)(5) of the Act,[10] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange does not believe that the removal of rules surrounding Odd Lot Dealers will affect the protection of investors or public interest because Exchange systems can process odd lot orders and they are treated the same as round lot and mixed lot orders for purposes of ranking and execution, there is no financial incentive or requirements to act as an Odd Lot Dealer, and there currently is no ETP Holder acting as an Odd Lot Dealer.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(6) thereunder.[12]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2011–30 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2011–30. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2011–30 and should be submitted on or before June 16, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–13023 Filed 5–25–11; 8:45 am]

BILLING CODE 8011–01–P

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has fulfilled this requirement.

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64530; File No. SR–BX–2011–027]

Self-Regulatory Organizations; NASDAQ OMX BX; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Extending the Pilot Period for BOX to Receive Inbound Routes of Orders from NOS

May 20, 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 May 18, 2011, NASDAQ OMX BX (the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b–4(f)(6) under the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange submits this proposed rule change to extend the pilot period of the Exchange's prior approval for Boston Options Exchange ("BOX") to receive inbound routes of certain option orders from Nasdaq Options Services, LLC ("NOS") through August 16, 2011.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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

Currently, NOS is the approved outbound routing facility of the NASDAQ Exchange for NOM, providing outbound routing from NOM to other market centers.[4] The Exchange and the NASDAQ Exchange have previously adopted rules to permit BOX to receive inbound routes of certain option orders by NOS in its capacity as an order routing facility of the NASDAQ Exchange for NOM.[5] The Exchange specifically has adopted a rule to prevent potential informational advantages resulting from the affiliation between BOX and NOS, as related to NOS's authority to route certain orders from NOM to BOX without checking the NOM book prior to routing.[6] NOS's authority to route these orders to BOX is subject to a pilot period ending May 18, 2011.[7] The Exchange hereby seeks to extend the previously approved pilot period (with the attendant obligations and conditions) for an additional 90 days, through August 16, 2011.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[8] in general, and with Section 6(b)(5) of the Act,[9] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Specifically, the proposed rule change will allow BOX to continue receiving inbound routes of equities orders from NOS, acting in its capacity as a facility of the NASDAQ Exchange, in a manner consistent with prior approvals and established protections. The Exchange believes that extending the previously approved pilot period for sixty days is a sufficient length to permit both the Exchange and the Commission to assess the impact of the Exchange's authority to permit BOX to receive direct inbound routes of certain option orders via NOS (including the attendant obligations and conditions).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A)[10] of the Act and Rule 19b–4(f)(6) thereunder.[11]

A proposed rule change filed under 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[12] However, Rule 19b–4(f)(6)(iii) [13] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay. The Exchange notes that the proposal will allow BOX to continue receiving inbound routes of equities orders from NOS, in a manner consistent with prior approvals and established protections, while also permitting the Exchange and the Commission to assess the impact of the pilot.[14] The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver would allow the pilot period to be extended without undue delay through August 16, 2011. For this reason, the Commission designates the proposed rule change to be operative upon filing with the Commission.[15]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing,

[4] NOM Rule Chapter VI, Section 11(c). Under NOM Rule Chapter VI, Section 11(c): (1) NOM routes orders in options via NOS, which serves as the sole "routing facility" of NOM; (2) the sole function of the routing facility is to route orders in options to away markets pursuant to NOM rules, solely on behalf of NOM; (3) NOS is a member of an unaffiliated self-regulatory organization, which is the designated examining authority for the broker-dealer; (4) the routing facility is subject to regulation as a facility of the NASDAQ Exchange, including the requirement to file proposed rule changes under Section 19 of the Act; (5) use of NOS to route order to other market centers is optional; (6) NOM must establish and maintain procedures and internal controls reasonably designed to adequately restrict the flow of confidential and proprietary information between the NASDAQ Exchange and its facilities (including the routing facility), and any other entity; and (7) the books, records, premises, officers, directors, agents, and employees of the routing facility, as a facility of the NASDAQ Exchange, shall be subject at all times to inspection and copying by the NASDAQ Exchange and the Commission.

[5] *See* Securities Exchange Act Release No. 60349 (July 20, 2009), 74 FR 37071 (July 27, 2009) (SR–BX–2009–035); Securities Exchange Act Release No. 60354 (July 21, 2009), 74 FR 37074 (July 27, 2009) (SR–NASDAQ–2009–065).

[6] *See* Chapter XXXIX, Section 2(c) of the Grandfathered Rules of the Exchange.

[7] *See* Securities Exchange Act Release No. 63364 (November 23, 2010), 75 FR 74121 (November 30, 2010) (SR–BX–2010–078).

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this five-day pre-filing requirement.

[13] *Id.*

[14] *See supra* Section II.A.2.

[15] For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–BX–2011–027 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–BX–2011–027. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2011–027 and should be submitted on or before June 16, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–13038 Filed 5–25–11; 8:45 am]

BILLING CODE 8011–01–P

[16] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of Reporting Requirements Submitted for OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before June 27, 2011. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: *Agency Clearance Officer,* Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and *OMB Reviewer,* Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–7044.

SUPPLEMENTARY INFORMATION:

Title: SBA Application for Certificate of Competency.

Form No: 1531.

Frequency: On Occasion.

Description of Respondents: Prime Government Contractors.

Responses: 275.

Annual Burden: 2,200.

Title: Impact of Training Programs.

Form No: N/A.

Frequency: On Occasion.

Description of Respondents: Small Business owners and potential small business owners from throughout the U.S. and the territories.

Responses: 30,000.

Annual Burden: 6,000.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 2011–13085 Filed 5–25–11; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

[Disaster Declarations #12597 and #12598]

Massachusetts Disaster #MA–00033

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the Commonwealth of Massachusetts dated 05/19/2011.

Incident: Apartment Building Fire.

Incident Period: 04/30/2011.

Effective Date: 05/19/2011.

Physical Loan Application Deadline Date: 07/18/2011.

Economic Injury (Eidl) Loan Application Deadline Date: 02/20/2012.

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:

Hampden.

Contiguous Counties:

Massachusetts: Berkshire, Hampshire, Worcester.

Connecticut: Hartford, Litchfield, Tolland.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	5.375
Homeowners without Credit Available Elsewhere	2.688
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

	Percent
Non-Profit Organizations without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 12597 5 and for economic injury is 12598 0.

The States which received an EIDL Declaration # are Massachusetts, Connecticut.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: May 19, 2011.

Karen G. Mills,

Administrator.

[FR Doc. 2011–13048 Filed 5–25–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12594 and #12595]

Pennsylvania Disaster #PA–00038

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the Commonwealth of Pennsylvania dated 05/18/2011.

Incident: Flooding.

Incident Period: 04/16/2011.

Effective Date: 05/18/2011.

Physical Loan Application Deadline Date: 07/18/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 02/20/2012.

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:

Cumberland.

Contiguous Counties:

Pennsylvania: Adams, Dauphin, Franklin, Perry, York.

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 12594 6 and for economic injury is 12595 0.

The Commonwealth which received an EIDL Declaration # is Pennsylvania.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: May 18, 2011.

Karen G. Mills,

Administrator.

[FR Doc. 2011–13049 Filed 5–25–11; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes revisions and one extension of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, e-mail, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

(OMB), Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202–395–6974, E-mail address: *OIRA_Submission@omb.eop.gov.*

(SSA), Social Security Administration, DCBFM, Attn: Reports Clearance Officer, 1333 Annex Building, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–965–6400, E-mail address: *OPLM.RCO@ssa.gov.*

I. The information collections below are pending at SSA. SSA will submit them to OMB within 60 days from the date of this notice. To be sure we consider your comments, we must receive them no later than July 25, 2011. Individuals can obtain copies of the collection instruments by calling the SSA Reports Clearance Officer at 410–965–8783 or by writing to the above e-mail address.

1. Marriage Certification—20 CFR 404.725—0960–0009. SSA uses Form SSA–3 to determine if a spouse claimant has the necessary relationship to the Social Security number holder (*i.e.,* the worker) to qualify for the worker's Old Age, Survivors, and Disability Insurance (OASDI) benefits. The respondents are applicants for a spouse's OASDI benefits.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 180,000.

Frequency of Response: 1.

Average Burden per Response: 5 minutes.

Estimated Annual Burden: 15,000 hours.

2. Statement Regarding Date of Birth and Citizenship—20 CFR 404.716—0960–0016. When individuals apply for Social Security benfits and cannot provide preferred methods of proving age or citizenship, SSA uses Form SSA–702 to establish these facts. Specifically, SSA uses the SSA–702 to establish age as a factor of entitlement to Social Security benefits, or U.S. citizenship as a payment factor. Respondents are individuals with knowledge about the date of birth or citizenship of applicants filing for one or more Social Security benefits who need to establish age or citizenship.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 1,200.

Frequency of Response: 1.

Average Burden per Response: 10 minutes.

Estimated Annual Burden: 200.

3. Letter to Landlord Requesting Rental Information—20 CFR 416.1130 (b)—0960–0454. SSA uses Form SSA–L5061 to identify rental subsidy arrangements involving applicants for and recipients of Supplemental Security Income (SSI) payments. SSA uses the information to determine an income

value for these subsidies, eligibility for payments, and the correct amount payable. The respondents are landlords of the SSI claimants.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 51,000.

Frequency of Response: 1.

Average Burden per Response: 10 minutes.

Estimated Annual Burden : 8,500 hours.

II. SSA submitted the information collections below to OMB for clearance. Your comments regarding the information collections would be most useful if OMB and SSA receive them within 30 days from the date of this publication. To be sure we consider your comments, we must receive them no later than June 27, 2011. Individuals can obtain copies of the OMB clearance packages by calling the SSA Reports Clearance Officer at 410–965–8783 or by writing to the above e-mail address.

1. Statement Regarding Marriage—20 CFR 404.726—0960–0017. Section 216(h)(1)(A) of the Social Security Act directs SSA to apply State law to determine an individual's marital relationship. Some State laws recognize marriages without a ceremony (*i.e.,* common-law marriages). In such cases, SSA provides the same spouse or widow(er) benefits to the common-law spouses as it does to ceremonially married spouses. To determine common-law spouses, SSA must elicit information from blood relatives or other persons who are knowledgeable about the alleged common-law relationship. SSA uses Form SSA–753, Statement Regarding Marriage, to collect information from third parties to verify the applicant's statements about intent, cohabitation, and holding out to the public as married, which are the basic tenets of a common-law marriage. SSA uses the information to determine if a valid marital relationship exists, and if the common-law spouse is entitled to Social Security spouse or widow(er) benefits. The respondents are third parties who can confirm or deny the alleged common-law marriage.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 40,000.

Frequency of Response: 1.

Average Burden per Response: 9 minutes.

Estimated Annual Burden: 6,000 hours.

2. Statement Regarding Contributions—20 CFR 404.360–404.366 and 404.736—0960–0020. SSA examines a child's current source of support when determining the child's entitlement to Social Security benefits. To make this determination, SSA collects information on Form SSA–783. The respondents are individuals providing information about a child's source of support.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 30,000.

Frequency of Response: 1.

Average Burden per Response: 17 minutes.

Estimated Annual Burden: 8,500 hours.

3. Questionnaire About Employment or Self-Employment Outside the United States—20 CFR 404.401(b)(1), 404.415 & 404.417—0960–0050. SSA collects information on the SSA–7163 to determine: (1) Whether work beneficiaries performed outside the United States is cause for deductions from their monthly benefits; (2) which of two work tests (foreign or regular test) is applicable; and (3) the number of months, if any, SSA should impose deductions. Respondents are beneficiaries living and working outside the United States.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 20,000.

Frequency of Response: 1.

Average Burden per Response: 12 minutes.

Estimated Annual Burden: 4,000 hours.

4. Statement of Income and Resources—20 CFR 416.207, 146.301, 416.310, 416.704, and 416.708—0960–0124. SSA collects information about income and resources on the SSA–8010–BK for SSI claims and redeterminations. SSA uses the information to make initial or continuing eligibility determinations for SSI claimants or recipients who are subject to deeming. The respondents are persons whose income and resources SSA may deem (consider to be available) to SSI applicants or recipients.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 341,000.

Frequency of Response: 1.

Average Burden per Response: 26 minutes.

Estimated Annual Burden: 147,767 hours.

5. Statement of Death by Funeral Director—20 CFR 404.715 and 404.720—0960–0142. When a Social Security-insured worker dies, the funeral director or funeral home responsible for the worker's burial or cremation completes Form SSA–721 and sends it to SSA. SSA uses this information for three purposes: (1) To establish proof of death for the insured worker; (2) to determine if the insured worker was receiving any pre-death benefits that SSA needs to terminate; and (3) to ascertain which surviving family member is eligible for the lump-sum death payment or other death benefits. The respondents are funeral directors who handle funeral arrangements for the insured individuals.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 319,811.

Frequency of Response: 1.

Average Burden per Response: 3.5 minutes.

Estimated Annual Burden: 18,656 hours.

6. Request for Hearing by Administrative Law Judge—20 CFR 404.929, 404.933, 416.1429, 404.1433, 405.722, 418.1350—0960–0269. When SSA denies applicants' or beneficiaries' requests for new or continuing benefits, those applicants or beneficiaries are entitled to request a hearing to appeal the decision. SSA uses the information from Form HA–501 to determine if the individual filed the request within the prescribed time, is the proper party, and has taken the steps necessary to obtain the right to a hearing. SSA also uses the information to determine the individual's reason(s) for disagreeing with SSA's prior determinations in the case, if the individual has additional evidence to submit, if the individual wants an oral hearing or a decision on-the-record, and whether the individual has (or wants to appoint) a representative. The respondents are Social Security benefit applicants and recipients who want to appeal SSA's denial of their request for new or continued benefits and Medicare Part B recipients who must pay the Medicare Part B Income-Related Monthly Adjustment Amount.

Type of Request: Revision of an OMB-approved information collection.

Collection method	Number of respondents	Frequency of response	Estimated completion time (minutes)	Total burden (hours)
Paper & Modernized Claims System	33, 473	1	10	5,579
i501	635,996	1	19	201,399
Totals	669,469	.....	.....	206,978

*This is a correction notice: SSA published incorrect burden information for this collection at 76 FR 1835 on 3/03/11. We are correcting this error here.

7. Review of the Disability Hearing Officer's Reconsidered Determinations Before It Is Issued—20 CFR 404.913–404.918, 404.1512–404.1515, 404.1589, 416.912–416.915, 416.989, 416.1413–416.1418, 404.918(d) and 416.1418(d)—0960–0709. After SSA approves claimants for Social Security disability benefits or SSI payments, SSA periodically conducts a continuing disability review (CDR). During a CDR, the agency reviews claimants' status to see if their condition improved to the point they are capable of working, and if so, to reduce or stop their benefits or payments. If SSA notifies a claimant that the agency will stop benefits or payments, the claimant may appeal the determination. The first appeal gives the claimant the opportunity for a full evidentiary hearing before a disability hearing officer (DHO).

For quality review purposes, a Federal component reviews a small sample of DHO's determinations. It is rare for the reviewing component to reverse a DHO determination favorable to the claimant. Before SSA can issue an unfavorable determination, we give the claimant 10 days to provide a written statement explaining why SSA should not stop payments. The written statement is the information SSA collects in this process. Respondents are CDR claimants whose payments are going to cease.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 8.

Frequency of Response: 1.

Average Burden per Response: 60 minutes.

Estimated Annual Burden: 8 hours.

Dated: May 23, 2011.

Faye Lipsky,

Reports Clearance Officer, Center for Reports Clearance, Social Security Administration.

[FR Doc. 2011–13087 Filed 5–25–11; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice: 7481]

Culturally Significant Object Imported for Exhibition Determinations: "Turkish Taste at the Court of Marie-Antoinette"

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000, I hereby determine that the object to be included in the exhibition "Turkish Taste at the Court of Marie-Antoinette," imported from abroad for temporary exhibition within the United States, is of cultural significance. The object is imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit object at The Frick Collection, from on or about June 7, 2011, until on or about September 11, 2011, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a description of the exhibit object, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6469). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: May 23, 2011.

Ann Stock,

Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2011–13253 Filed 5–25–11; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 7482]

Bureau of Political-Military Affairs: Directorate of Defense Trade Controls; Notifications to the Congress of Proposed Commercial Export Licenses

SUMMARY: Notice is hereby given that the Department of State has forwarded the attached Notifications of Proposed Export Licenses to the Congress on the dates indicated on the attachments pursuant to sections 36(c) and 36(d) and in compliance with section 36(f) of the Arms Export Control Act (22 U.S.C. 2776).

DATES: *Effective Date:* As shown on each of the 7 letters.

FOR FURTHER INFORMATION CONTACT: Mr. Robert S. Kovac, Managing Director, Directorate of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State (202) 663–2861.

SUPPLEMENTARY INFORMATION: Section 36(f) of the Arms Export Control Act mandates that notifications to the Congress pursuant to sections 36(c) and 36(d) must be published in the **Federal Register** when they are transmitted to Congress or as soon thereafter as practicable.

April 26, 2011 (Transmittal Number DDTC 10–128)

The Honorable John A. Boehner,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) and 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad and the export of defense articles, including technical data, and defense services in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to France and the United Kingdom for the production of the VT–1 Missile, the related launch pod container, and

certain tooling, test equipment, and related hardware.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Joseph E. Macmanus,
Acting Assistant Secretary, Legislative Affairs.

April 20, 2011 (Transmittal Number DDTC 10–130)

The Honorable John A. Boehner,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed technical assistance agreement for the export of defense articles, to include technical data, and defense services in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the transfer of defense articles, to include technical data, and defense services to support the design, manufacture and delivery of the Es'Hail Satellite Program.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Joseph E. Macmanus,
Acting Assistant Secretary, Legislative Affairs.

April 11, 2011 (Transmittal Number DDTC 10–141)

The Honorable John A. Boehner,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed technical assistance agreement for the export of defense articles, to include technical data, and defense services in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services related to the sale of S–434, S–70i and S–76D helicopters to the Ministry of the Interior of Saudi Arabia.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Joseph E. Macmanus,
Acting Assistant Secretary, Legislative Affairs.

April 14, 2011 (Transmittal Number DDTC 11–001)

The Honorable John A. Boehner,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed agreement for the export of defense articles or defense services sold commercially under contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the transfer of defense articles, including technical data, and defense services to support the design, manufacture, delivery and in-orbit support of the INMARSAT–5 Commercial Communication Satellite Program for the United Kingdom.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Joseph E. Macmanus,
Acting Assistant Secretary, Legislative Affairs.

April 11, 2011 (Transmittal Number DDTC 11–013)

The Honorable John A. Boehner,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the export of defense articles, to include technical data, and defense services in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to the United Kingdom for the Heads-Up Display (HUD) for the C–17 Globemaster III transport aircraft.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Joseph E. Macmanus,
Acting Assistant Secretary, Legislative Affairs.

April 11, 2011 (Transmittal Number DDTC 11–028)

The Honorable John A. Boehner,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed technical assistance agreement to include the export of defense articles, to include technical data, and defense services in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the transfer of defense articles, to include technical data, and defense services to support the Proton launch of the SATMEX 8 Commercial Communication Satellite from the Baikonur Cosmodrome in Kazakhstan.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains

business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Joseph E. Macmanus,

Acting Assistant Secretary, Legislative Affairs.

April 20, 2011 (Transmittal Number DDTC 11–031)

The Honorable John A. Boehner, Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed amendment to a technical assistance agreement to include the export of defense articles, including technical data, and defense services in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to Japan for the support, maintenance, overhaul and assembly, inspection and test of F110–GE–129 gas turbine engines for use in F–2 fighter aircraft owned and operated by the Japanese Ministry of Defense. This transaction is in response to an urgent need request made by the Japan Air Self-Defense Force as a result of the recent disaster in Japan.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Joseph E. Macmanus,

Acting Assistant Secretary, Legislative Affairs.

Dated: May 5, 2011.

Robert S. Kovac,

Managing Director, Directorate of Defense Trade Controls, Department of State.

[FR Doc. 2011–13111 Filed 5–25–11; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Special Awareness Training for the Washington, DC Metropolitan Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. This collection of information is required of persons who must receive training and testing under 14 CFR 91.161 in order to fly within 50 nautical miles (NM) of the Washington, DC omni-directional range/distance measuring equipment (DCA VOR/DME). For a person to enroll in the FAA's "Washington, DC Area Training Program," the rule requires persons to electronically furnish their names, residence addresses, and pilot certificate numbers.

DATES: Written comments should be submitted by July 25, 2011.

FOR FURTHER INFORMATION CONTACT: Carla Scott on (202) 385–4293, or by e-mail at: *Carla.Scott@faa.gov.*

SUPPLEMENTARY INFORMATION: *OMB Control Number:* 2120–0734.

Title: Special Awareness Training for the Washington, DC Metropolitan Area.

Form Numbers: There are no FAA forms associated with this collection.

Type of Review: Renewal of an information collection.

Background: The final rule containing this information collection requirement was published on August 12, 2008 (73 FR 46797). The collection of information is solicited by the FAA in order to maintain a National database registry for those persons who are required to receive training and be tested for flying in the airspace that is within 60 NM of the DCA VOR/DME. This National database registry provides the FAA with information on how many persons and the names of those who have completed this training. This information is needed so that the FAA can answer to the U.S. Congress on the success of this program.

Respondents: Approximately 366 pilots.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 1 hour.

Estimated Total Annual Burden: 122 hours.

ADDRESSES: Send comments to the FAA at the following address: Ms. Carla Scott, Room 336, Federal Aviation Administration, AES–300, 950 L'Enfant Plaza, SW., Washington, DC 20024.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC, on May 19, 2011.

Carla Scott,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2011–12985 Filed 5–25–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Availability of a Record of Decision (ROD) for the Proposed Honolulu High-Capacity Transit Corridor Project (HHCTCP) Segment at Honolulu International Airport (HNL), Honolulu, HI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Availability of Record of Decision.

SUMMARY: The FAA is issuing this notice to advise the public that it has issued a ROD for the construction and operation of a 3-mile segment at HNL for the proposed Honolulu High-Capacity Transit Corridor Project on Oahu, Hawaii.

SUPPLEMENTARY INFORMATION: The FAA has completed and issued a ROD for a 3-mile segment of the proposed HHCTCP at HNL, Honolulu, Hawaii. The ROD is based on the evaluation in the Final Environmental Impact Statement (EIS) that was published in June 2010 by the Federal Transit Administration (FTA) and adopted by the FAA in July 2010. The proposed HHCTCP consists of 20 miles of an elevated guideway, transit stations,

park-and-ride facilities, maintenance and storage facility, and other ancillary facilities to support the transit system on the Island of Oahu, Hawaii. The FAA was a Cooperating Agency on the project due to its special expertise on aviation matters and jurisdiction by law for projects on airport property at HNL. The FAA assisted FTA in the preparation of the Final EIS. A refined rail alignment at HNL was evaluated in the Final EIS and was determined to be consistent with FAA requirements. The FAA ROD only addresses the 3-mile portion of the transit rail project that is located on HNL property and subject to FAA approval. The FTA issued its ROD for the entire 20-mile project in January 2011.

The Project would provide a high-capacity rapid transit service in the highly congested east-west transportation corridor between Kapolei and Ala Moana Center. The Project is intended to provide faster, more reliable public transportation services than what can be achieved with buses operating in congested mixed traffic. The project will provide a multi-modal transportation connection at HNL and also improve transportation links within the travel corridor.

The ROD discusses alternatives considered by FAA in reaching its decision, summarizes the analysis used to evaluate the alternatives, and briefly summarizes the potential environmental consequences evaluated in the Final EIS. The ROD also identifies the FAA's environmentally preferred alternative.

Copies of the ROD are available for public examination during business hours at the following locations:

1. Federal Aviation Administration, Honolulu Airports District Office, 300 Ala Moana Boulevard, Room 7–128, Honolulu, HI 96813.

2. Federal Aviation Administration, Airports Division, Room 3012, 15000 Aviation Boulevard, Hawthorne, CA 90261.

3. Federal Aviation Administration, Office of the Associate Administrator for Airports, Planning and Environmental Division, Room 615, 800 Independence Avenue SW., Washington DC 20591.

4. State of Hawaii, Department of Transportation, Airports Division, 400 Rodgers Boulevard, Suite 700, Honolulu, HI 96819.

FOR FURTHER INFORMATION CONTACT: Mr. Gordon Wong, Environmental Specialist, Federal Aviation Administration, Honolulu Airports District Office, 300 Ala Moana Boulevard, Honolulu, HI 96813. Telephone: (808) 541–1232.

Issued in Hawthorne, California, on May 12, 2011.

Debbie Roth,

Acting Manager, Airports Division, Western-Pacific Region, AWP–600.

[FR Doc. 2011–12983 Filed 5–25–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Availability of the Draft Environmental Impact Statement: Riverside and Orange Counties, CA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Availability of the Draft Environmental Impact Statement.

SUMMARY: The Federal Highway Administration (FHWA), on behalf of the California Department of Transportation (Caltrans), announces the availability of the Draft Environmental Impact Statement for a proposed highway project in Riverside and Orange Counties, California.

DATES: The comment period for the State Route 91 Corridor Improvement Project Draft Environmental Impact Statement will end 45 days after publication of this Notice of Availability. A public meeting for the Draft Environmental Impact Statement will be held on June 9, 2011 at the Corona Civic Center Gymnasium, 502 S. Vicentia, Corona, California 92882, between 3:30 p.m. and 7:30 p.m.

ADDRESSES: The Draft Environmental Impact Statement is available for review at the Riverside County Transportation Commission, 4080 Lemon Street, 3rd Floor, Riverside, CA 92501, the Corona Public Library, 650 S. Main Street, Corona, CA 92882, the City of Corona Public Works Department, 400 S. Vicentia Ave., 2nd Floor, Suite 210, Corona, CA 92882, and California Department of Transportation (Caltrans), District 8, 464 W. Fourth Street, San Bernardino, CA 92401. The Draft Environmental Impact Statement is also available at *http://www.sr91project.info/index.php.*

FOR FURTHER INFORMATION CONTACT: Aaron Burton, Senior Environmental Planner, California Department of Transportation (Caltrans), District 8, 464 West Fourth Street, Sixth Floor, San Bernardino, California 92401.

SUPPLEMENTARY INFORMATION:

Effective July 1, 2007, the Federal Highway Administration (FHWA) assigned, and the California Department of Transportation (Caltrans) assumed, environmental responsibilities for this project pursuant to 23 U.S.C. 327. Caltrans as the delegated National Environmental Policy Act (NEPA) agency has prepared a Draft Environmental Impact Statement on a proposal for a highway improvement project in Riverside County, California. The State Route 91 Corridor Improvement Project proposes to increase capacity on the State Route 91 and Interstate 15 in Riverside and Orange Counties. The State Route 91 Corridor Improvement Project proposes to widen existing SR–91 from the State Route 91/State Route 241 interchange in the Cities of Anaheim and Yorba Linda in Orange County to Pierce Street in the City of Riverside in Riverside County. The proposed project also includes improvements to Interstate 15 in Riverside County between the Interstate 15/Cajalco Road interchange in the City of Corona and the Interstate 15/Hidden Valley Parkway interchange in the Cities of Corona and Norco. The project limits on Interstate 15 begin at Cajalco Road, approximately 5 miles south of SR–91 and extend north on Interstate 15 to Hidden Valley Parkway, approximately 1 mile north of SR–91.

The alternatives evaluated in the Draft Environmental Impact Statement are two Build Alternatives and a No Build Alternative. Both State Route 91 Corridor Improvement Project Build Alternatives would add one general purpose lane in each direction on the project segment of State Route 91. These lane additions would be continuous throughout the project limits. Both Build Alternatives would provide auxiliary lanes or collector-distributor roads at interchanges and would modify the existing interchange geometrics within the project limits to improve traffic operations. The Build Alternatives include upgrades to existing State Route 91 to standard shoulder, lane, and buffer widths where those upgrades can be accommodated. Alternative 1 would maintain one median high-occupancy vehicle (HOV) lane in each direction on State Route 91 within the project limits and proposes two HOV lane connectors: From eastbound State Route 91 to southbound Interstate 15 and from northbound Interstate 15 to westbound State Route 91. Alternative 1 would also add one HOV lane in each direction on Interstate 15 extending from the proposed HOV lane connectors south to Ontario Avenue. Alternative 2 proposes to convert the existing HOV lanes to two tolled express lanes in each direction on State Route-91 from the Orange/Riverside County line to Interstate 15 including two express lane connectors:

From eastbound State Route 91 to southbound Interstate 15 and from northbound Interstate 15 to westbound State Route 91. Alternative 2 also proposes to add express lane connectors from eastbound State Route 91 to northbound Interstate 15 and from southbound Interstate 15 to westbound State Route 91. Alternative 2 would also add one tolled express lane in each direction on Interstate 15 extending from the proposed express lane connectors north to Hidden Valley Parkway and south to Cajalco Road. The No-Build Alternative would generally maintain the current configuration of State Route 91 and Interstate 15. The Notice of Intent was published in the **Federal Register** July 3, 2008. The project's termini on State Route 91 is at State Route 241 on the west and Pierce Street on the east. On Interstate 15, the project's termini are Hidden Valley Parkway on the north and Cajalco on the south. The project segment of State Route 91 extends approximately 14 miles and approximately 6 miles on Interstate 15. Anticipated Federal approvals include, Modified Access Report to the Interstate System, Air Quality Conformity, Section 7 consultation for Threatened and Endangered Species, and a Section 404 individual permit.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: May 20, 2011.

Shawn E. Oliver,

South Team Leader, State Programs, Federal Highway Administration, Sacramento, California.

[FR Doc. 2011–13042 Filed 5–25–11; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2011 0068]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel ADIOS.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2011–0068 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388 (68 FR 23084, April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before June 27, 2011.

ADDRESSES: Comments should refer to docket number MARAD–2011–0068. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979, E-mail *Joann.Spittle@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel ADIOS is:

Intended Commercial Use of Vessel: "Intended for personal use. However, coastalized trade endorsement is being sought so the vessel can be incorporated in the U.S."

Geographic Region: "Hawaii."

Privacy Act

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

By Order of the Maritime Administrator.

Dated: May 19, 2011.

Christine Gurland,

Secretary, Maritime Administration.

[FR Doc. 2011–13073 Filed 5–25–11; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2011 0067]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel KINGFIN.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2011–0067 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388 (68 FR 23084, April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver

application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before June 27, 2011.

ADDRESSES: Comments should refer to docket number MARAD–2011–0067. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979, E-mail *Joann.Spittle@dot.gov.*

SUPPLEMENTARY INFORMATION:

As described by the applicant the intended service of the vessel KINGFIN is:

Intended Commercial Use of Vessel: "Lake Michigan charter fishing."

Geographic Region: "Illinois, Wisconsin, Michigan, Indiana."

Privacy Act

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

By Order of the Maritime Administrator.

Dated: May 19, 2011.

Christine Gurland,

Secretary, Maritime Administration.

[FR Doc. 2011–13075 Filed 5–25–11; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Art Advisory Panel—Notice of Closed Meeting

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of Closed Meeting of Art Advisory Panel.

SUMMARY: Closed meeting of the Art Advisory Panel will be held in Washington, DC.

DATES: The meeting will be June 1, 2011.

ADDRESSES: The closed meeting of the Art Advisory Panel will be held on June 1, 2011, in the Appeals Media Center beginning at 9:30 a.m., Franklin Court Building, 1099 14th Street, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Daniel M. Beckerle, C:AP:P&V:ART, 1099 14th Street, NW., Washington, DC 20005. Telephone (202) 435–5790 (not a toll free number).

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App., that a closed meeting of the Art Advisory Panel will be held on June 1, 2011, beginning at 9:30 a.m., in the Appeals Media Center, Franklin Court Building, 1099 14th Street, NW., Washington, DC 20005.

The agenda will consist of the review and evaluation of the acceptability of fair market value appraisals of works of art involved in Federal income, estate, or gift tax returns. This will involve the discussion of material in individual tax returns made confidential by the provisions of 26 U.S.C. 6103.

A determination as required by section 10(d) of the Federal Advisory Committee Act has been made that this meeting is concerned with matters listed in section 552b(c)(3), (4), (6), and (7), and that the meeting will not be open to the public.

Sheldon Kay,

Deputy Chief, Appeals.

[FR Doc. 2011–13027 Filed 5–25–11; 8:45 am]

BILLING CODE 4830–01–P

FEDERAL REGISTER

Vol. 76 Thursday,
No. 102 May 26, 2011

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17
Endangered and Threatened Wildlife and Plants; Listing the Salmon-Crested Cockatoo as Threatened Throughout its Range with Special Rule; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R9–IA–2009–0056; MO 92210–1111F105 B6]

RIN 1018–AW00

Endangered and Threatened Wildlife and Plants; Listing the Salmon-Crested Cockatoo as Threatened Throughout its Range with Special Rule

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, determine threatened status for the salmon-crested cockatoo (*Cacatua moluccensis*) under the Endangered Species Act of 1973, as amended (Act). This final rule implements the Federal protections provided by the Act for this species. We are also publishing a special rule for the species.

DATES: This rule becomes effective June 27, 2011.

ADDRESSES: This final rule is available on the Internet at *http://www.regulations.gov* and comments and materials we received, as well as supporting documentation used in the preparation of this rule, will be available for public inspection, by appointment, during normal business hours at: U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Suite 400, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Janine Van Norman, Chief, Branch of Foreign Species, Endangered Species Program, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 420, Arlington, VA 22203; telephone 703–358–2171; facsimile 703–358–1735. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

The Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), is a law that was passed to prevent extinction of species by providing measures to help alleviate the loss of species and their habitats. Before a plant or animal species can receive the protection provided by the Act, it must first be added to one of the Federal Lists of Threatened and Endangered Wildlife and Plants; section 4 of the Act and its implementing regulations at 50 CFR part 424 set forth the procedures for adding species to these lists.

Previous Federal Action

On May 6, 1991, we received a petition (1991 petition) from the International Council for Bird Preservation to add 53 foreign birds, including the salmon-crested cockatoo, to the List of Endangered and Threatened Wildlife. In response to the 1991 petition, we published a substantial 90-day finding on December 16, 1991 (56 FR 65207), for all 53 species, initiated a status review to determine if listing each of these species was warranted, and sought information from the public and interested parties on the status of these species. On March 28, 1994 (59 FR 14496), we published a 12-month finding on the 1991 petition, along with a proposed rule to list 30 African birds under the Act, which included 15 species from the 1991 petition. In that document, we announced our finding that listing the remaining 38 species from the 1991 petition, including the salmon-crested cockatoo, was warranted but precluded by higher priority listing actions. We made a subsequent warranted-but-precluded finding for all outstanding foreign species from the 1991 petition, including the salmon-crested cockatoo, as published in our annual notice of review (ANOR) on May 21, 2004 (69 FR 29354).

Per the Service's listing priority guidelines (September 21, 1983; 48 FR 43098), our 2007 ANOR (72 FR 20183) identified the listing priority numbers (LPNs) (ranging from 1 to 12) for all outstanding foreign species. The LPN for the salmon-crested cockatoo was LPN 2. With the exception of listing priority ranking of 1, which addresses monotypic genera that face imminent threats of high magnitude, category 2 represents the Service's highest priority.

On July 29, 2008 (73 FR 44062), we published in the **Federal Register** a notice announcing our annual petition findings for foreign species. We announced that listing was warranted for 30 foreign bird species, including the salmon-crested cockatoo, which is the subject of this proposed rule, and stated that we would "promptly publish proposals to list these 30 taxa."

On September 8, 2008, the Service received a 60-day notice of intent to sue from the Center for Biological Diversity (CBD) and Peter Galvin regarding alleged violations of section 4 of the Act for the failure to promptly publish listing proposals for the 30 "warranted" species identified in our 2008 ANOR (73 FR 44062). On June 15, 2009, the Service entered into a settlement agreement with CBD (*CBD, et al.* v. *Salazar,* 09–cv–02578–CRB), in which we agreed to submit to the **Federal Register** a proposed listing rule for the salmon-crested cockatoo by October 30, 2009.

On November 3, 2009, we published in the **Federal Register** (74 FR 56770) a proposed rule to list the salmon-crested cockatoo as threatened under the Act and a special rule for the species under section 4(d) of the Act. Following publication, we implemented the Service's peer review process and opened a 90-day comment period to solicit scientific and commercial information on the species from all interested parties.

Summary of Comments and Recommendations

We base this rule on a review of the best scientific and commercial information available, including all information we received during the public comment period. In the November 3, 2009, proposed rule, we requested that all interested parties submit information that might contribute to development of a final rule. We also contacted appropriate scientific experts and organizations and invited them to comment on the proposed listing. We received 13 comments from members of the public.

We reviewed all comments we received for substantive issues and new information regarding the proposed listing of this species, and we address those comments below. Overall, the commenters supported the proposed listing, although two commenters objected to the special rule. Three comments included additional information for consideration; all other comments simply supported the proposed listing without providing scientific or commercial data.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we solicited expert opinions from five individuals with scientific expertise that included familiarity with the species, the geographic region in which the species occurs, and conservation biology principles. We did not receive responses from any of the peer reviewers from whom we requested comments.

Public Comments

Comment (1): Several commenters provided supporting data and information regarding the species biology, ecology, life history, population estimates, threat factors, and current conservation efforts.

Our Response: We thank all the commenters for their interest in the conservation of this species and thank those commenters who provided information for our consideration in making this listing determination. Most information submitted was duplicative of the information contained in the proposed rule; however, some comments contained information that provided additional clarity or support to, but did not substantially change, the information already contained in the proposed rule. This information has been incorporated into this rule. Substantial comments are addressed below.

Comment (2): One commenter had serious concerns with the proposed special rule and requested it be rewritten or withdrawn. Specific objections included:

Comment (2a): The commenter stated that it is difficult to determine the exact origin and status (captive or wild) of salmon-crested cockatoos. Most birds probably still come from the wild. The date of capture is not usually documented, and there appears to be little success in breeding this cockatoo in Indonesia. Wild and Indonesian captive-bred cockatoos would likely carry contagious diseases with them if admitted into the United States as pets. Furthermore, the commenter states that without protection against import and export of these birds, there is little incentive to cease illegal exports from Indonesia, which would foster continued collection from the wild.

Our Response: Most of the salmon-crested cockatoos imported into or exported from the United States are personal pets that owners took with them when traveling from and returning to the United States. The concerns of the commenter are applicable to trade in the domestic and international markets of Indonesia and surrounding countries, which are not subject to the Act's regulations on import and export of listed species, and therefore, not subject to the special rule. The special rule allows for import and export of certain cockatoos into and from the United States without a permit under the Act. However, all imports and exports of salmon-crested cockatoos, including those exempt from a permit under the Act as provided in the special rule, are still subject to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES, TIAS 8249) and the Wild Bird Conservation Act (WBCA, 16 U.S.C. 4901–4916) and their implementing regulations at 50 CFR part 23 and 50 CFR part 15, respectively, including permit application requirements on the origin of birds in trade (*e.g.,* wild or bred in captivity). Under the provisions of WBCA, any individual importing their pet bird into the United States for the first time must reside outside of the United States for at least 12 continuous months; thus, there is little incentive to import foreign specimens. Furthermore, to control diseases, the U.S. Department of Agriculture's Animal and Plant Health Inspection Service requires veterinary health certificates and health inspections for birds imported into the United States that meet certain requirements, and quarantine for other birds, as well as research, commercial, and zoological birds imported into the United States.

Comment (2b): This commenter stated that the special rule would not have favorable effects to "enhance the propagation or survival of the species," nor is it "necessary and advisable to provide for the conservation of the species" as stated in the proposed rule.

Our Response: We disagree with the commenter, and after careful consideration, we find that the special rule is necessary and advisable to provide for the conservation of the species. As the special rule indicates, importation of salmon-crested cockatoos, for purposes such as enhancement of propagation or survival of specimens, taken from the wild after January 18, 1990, would require certain conditions be met under 50 CFR § 17.32 in order for permits to be issued for such activities.

Under section 4(d) of the Act, the Secretary may issue, for threatened species, regulations necessary and advisable to provide for the conservation of the species. In this case, the special rule would allow the import and export of salmon-crested cockatoos held in captivity before January 18, 1990 (date the species was added to CITES Appendix I), whether taken from the wild or captive-bred, and of captive-bred salmon-crested cockatoos, without a permit issued under the Act, provided that the import or export complies with CITES and WBCA. CITES ensures that international trade in animal and plant species is not detrimental to the survival of wild populations by regulating the import, export, and reexport of CITES-listed animal and plant species. The purpose of the WBCA is to promote the conservation of exotic birds and to ensure that imports of exotic birds into the United States does not harm them. The best available commercial data indicates that the current threat to the salmon-crested cockatoo stems from illegal trade in the domestic and international markets of Indonesia and surrounding countries; the general prohibitions on import and export under the Act and 50 CFR 17.31 only extend within the jurisdiction of the United States and would not regulate such activities. Most salmon-crested cockatoo imports into and exports out of the United States are pets traveling with their owners. We did not find that import and export of salmon-crested cockatoos held in captivity before January 18, 1990 or bred in captivity contributes to either the species' habitat destruction or illegal trade. Thus, we find that the import and export requirements of the proposed special rule provide the necessary and advisable conservation measures that are needed for this species, while allowing U.S. citizens to continue traveling with their pet birds.

We have no information to suggest that interstate commerce activities are associated with threats to the salmon-crested cockatoo or will negatively affect any efforts aimed at the recovery of wild populations of the species. At the same time, the prohibitions on take under 50 CFR 17.31 would apply under this special rule and any interstate commerce activities that could incidentally take cockatoos will require a permit under 50 CFR 17.32. Furthermore, allowing interstate commerce of birds captive-bred and reared in the United States will preclude U.S. demand for salmon-crested cockatoos obtained from international markets, which would otherwise contribute to the illegal capture and trade of wild birds. Therefore, we find the prohibitions and authorizations contained within this special rule are all that is necessary and advisable for the conservation of the salmon-crested cockatoo.

Comment (2c): The commenter also stated that interstate exchange is not hindered by listing and listing would not hinder the exchange of cockatoos between breeders within the United States, implying that the special rule is not needed to allow this type of activity.

Our Response: Section 4(d) of the Act states that the Secretary may extend to threatened species prohibitions provided for endangered species under section 9. Our implementing regulations for threatened wildlife (50 CFR 17.31) incorporate the section 9 prohibitions for endangered wildlife, except when a special rule is promulgated. Under section 9(a)(1)(E) and (F) of the Act, it is unlawful for a person, subject to the jurisdiction of the United States, to deliver, receive, carry, transport, or ship in interstate or foreign commerce or sell or offer for sale in interstate commerce or foreign commerce any such species. The special rule would allow for

interstate commerce to accommodate, for example, breeders and owners of pet cockatoos within the United States. In addition, as stated above, allowing interstate commerce of birds captive-bred and reared in the United States will preclude any U.S. demand for salmon-crested cockatoos obtained from international markets, which would otherwise contribute to illegal capture and trade of this species.

Comment (3): Another commenter also objected to the special rule. Objections included:

Comment (3a): By allowing the import and export of certain captive salmon-crested cockatoos and interstate commerce, the United States will encourage additional illegal capture in Indonesia and allow wild birds to be imported under false pretenses, which will contribute to the cockatoo's decline. Significant covert trade persists in Indonesia. Traders are able to obtain illegal permits; salmon-crested cockatoos have been classified as white cockatoos (*Cacatua alba*), a legally traded species in Indonesia. The incentive to conduct illegal capture and trade is high, and parrot trapping accounts for 25 to 30 percent of the impoverished forest people of Seram's cash income.

Our Response: The best available commercial data indicates that the current threat to the salmon-crested cockatoo stems from illegal trade, including the actions described by the commenter, in the domestic and international markets of Indonesia and surrounding countries. The Act cannot regulate the illegal trade of this species within the domestic and international markets of Indonesia. Although the import and export of salmon-crested cockatoos taken from the wild and held in captivity before January 18, 1990 and captive-bred salmon-crested cockatoos would not require a permit under the Act (See *Our Response to Comment (2b)* above), the import or export of these birds in the United States must comply with CITES and WBCA regulations. Most imports of salmon-crested cockatoos into and exports from the United States are pets traveling with their owners. We have no evidence to suggest that this type of activity contributes to either the species' habitat destruction or illegal capture and trade. Furthermore, allowing interstate commerce of birds captive-bred and reared in the United States will preclude any U.S. demand for salmon-crested cockatoos obtained from international markets, which would otherwise contribute to the illegal capture and trade of this species.

Comment (3b): The commenter stated that the Service's assessment of the conservation needs of the salmon-crested cockatoo, based on its perceived success of the 1990 Appendix-I CITES listing, is unsound. The Service states that international trade of the species has gone down considerably since the listing of the species in Appendix I under CITES; however, this assertion is based only on officially reported trade information. In actuality, and in spite of the CITES Appendix-I listing and an Indonesian export ban, the salmon-crested cockatoo continues to be illegally captured on Seram and exported for international pet trade.

Our Response: The Service acknowledges that even with the salmon-crested cockatoo listed as an Appendix-I species under CITES and Indonesian laws put in place to protect salmon-crested cockatoos, illegal capture and trade are still concerns for the continued existence of this species. However, the best available commercial data indicate that illegal capture and international trade are centered in Indonesia and the bird markets of surrounding countries, not in the United States where the prohibitions of the Act and the special rule will apply on the effective date of this rule (see **DATES**). As most of the salmon-crested cockatoos imported into and exported from the United States are pet birds traveling with owners, we believe that the special rule does not contribute to the threats facing the salmon-crested cockatoo.

Summary of Changes From Proposed Rule

We fully considered the comments we received from the public on the proposed rule when developing this final listing of the salmon-crested cockatoo. This final rule incorporates changes to our proposed listing based on the comments that we received that are discussed above and newly available scientific and commercial information. Reviewers generally commented that the proposed rule was very thorough and comprehensive. We made some technical corrections based on new, although limited, information. None of the information, however, changed our determination that listing this species as threatened is warranted.

Species Information

Species Description

Cockatoos are a distinct group of parrots (order Psittaciformes), distinguished by the presence of an erectile crest (Cameron 2007, p. 1; Collar 1989, p. 5) and the lack of dyck texture in their feathers, which produces blue and green coloration in the plumage of other parrots (Brown and Toft 1999, p. 141). The salmon-crested cockatoo (also known as the Seram, Moluccan, pink-crested, or rose-crested cockatoo) is the largest and the most striking of Indonesia's white cockatoos (Kinnaird 2000, p. 14). Its body length is 46–52 centimeters (cm) (15.6–20 inches (in)), and its plumage varies from pale salmon-pink to whitish-pink. It has a long backward-curving, deep salmon-pink crest; the bill is large and gray-black; and the underwing and undertail are yellow-orange (BirdLife International (BLI) 2000, p. 242; Forshaw 1989, p. 141; Juniper and Parr 1998, pp. 280–281; Sweeney 2000, p. 130). Sexual dimorphism is exhibited by iris color; dark brown to black in adult males, reddish brown to red in females, and brown in immature birds (del Hoya *et al.* 1997, p. 278; Forshaw 1989, p. 141; Peratino 1979, p. 125).

Taxonomy

In 1751, Edwards described and pictorially delineated the salmon-crested cockatoo (Lint 1951, p. 223) and, in 1788, J.F. Gmelin named the species *Psittacus moluccensis* (Forshaw 1989, p. 141; Lint 1951, p. 223). In 1937, Peters (1937, p. 175) used the name *Kakatoe moluccensis* (Gmelin) in the *Check-list of Birds of the World.* In 1992, Andrew (1992, p. 21) used the name *Cacatua moluccensis* in the first published checklist of the birds of Indonesia. This name continues to be the recognized scientific name (Integrated Taxonomic Information System (ITIS) 2008, p. 1; Sibley and Monroe 1990, p. 112), and the alternative genus name *Kakatoe* is now obsolete (del Hoya *et al.* 1997, p. 278).

Some references (ITIS 2008, p. 1; Sibley and Monroe 1990, p. 112) place cockatoos in the family Psittacidae with lories and true parrots, whereas others (CITES 2008a, p. 1; Cameron 2007, p. 1) place cockatoos in a separate family, Cacatuidae. Of the 21 cockatoo species, 11 are in the genus *Cacatua* (Cameron 2007, pp. 1–3).

The closest relatives of the salmon-crested cockatoo, which is restricted to the South Moluccas, Indonesia (in the east central Indonesian island chain), are the umbrella cockatoo, which is restricted to the North Moluccas, and the blue-eyed cockatoo, which is restricted to the island of New Britain off the northeast coast of New Guinea (Cameron 2007, pp. 38–39, 51). In a biogeographic analysis of the mitochondrial DNA (mtDNA) phylogeny, Brown and Toft (1999, pp. 150–151) suggest that these three species may have had a common

ancestor that occupied an ancient landmass comprising Halmahera (a North Moluccan island) and Bismarck. The breakup of this landmass created two populations, and the subsequent dispersal of cockatoos from the North Moluccas to the South Moluccas created another population, which became the salmon-crested cockatoo (Cameron 2007, p. 56).

Range and Distribution

Cockatoos are only found in Australasia—a few archipelagos in Southeast Asia (Philippines, Indonesia, East Timor, Tanimbar, Bismarck, and Solomon), New Guinea, and Australia—suggesting that the modern species arose after the breakup of Gondwanaland, a southern supercontinent that existed 200–500 million years ago. The 19th century naturalist Alfred Russel Wallace was among the first to note the break in Australasian and Asian fauna. Wallace's line runs between the islands of Bali and Lombok, Borneo and Sulawesi, and south of the Philippines. Cockatoos are present on Lombok and Sulawesi, but not on Bali and Borneo. The line represents the western edge of a zone of overlap between Australasian and Asian fauna (known as Wallacea), with the eastern edge defined by the Australian continental shelf (Lydekker's Line) (Cameron 2007, pp. 1–3; White and Bruce 1986, p. 32).

The oceanic islands of Wallacea have a high level of endemism, which resulted in many islands being identified as Endemic Bird Areas (EBA) (Cameron 2007, p. 56). BLI designates EBAs by mapping bird species with restricted ranges of less than 50,000 square kilometers (km^2) (19,300 square miles (mi^2)) that overlap. The unique biodiversity concentrated in these small areas is particularly vulnerable; thus, EBAs represent priority areas for global biodiversity conservation (BLI 2008i, p. 1; Collar 2000, p. 27; Stattersfield *et al.* 1998, pp. 39, 45). The salmon-crested cockatoo is included in the Seram EBA (BLI 2003, p. 1; Stattersfield *et al.* 1998, pp. 528–531).

Seram

The salmon-crested cockatoo is endemic to the island of Seram (alternate spelling, Ceram), with records from adjacent islands of Haruku, Saparua, and Ambon (formerly called Ambonia) in the South Moluccas (BLI 2001, p. 1662; Juniper and Parr 1998, p. 281; Forshaw 1989, p. 141; Peters 1937, p. 175). The species resides in lowland rain forests up to 1,000 meters (m) (3,608 feet (ft)), remains locally common in Manusela National Park, and appears to be mostly distributed in the eastern part of the island (BLI 2008a, p. 2; Isherwood *et al.* 1998, p. 18). For a listing of specific distribution records of the salmon-crested cockatoo, see BLI (2001, p. 1662).

Ambon

Whether this species is native or introduced to Ambon is uncertain. Stresemann (1934, p. 16) reported that the salmon-crested cockatoo did not occur on Ambon. Thus, some scientists follow the view that the species may have been introduced to this island (Forshaw 1989, p. 141; Lever 1987, p. 245; van Bemmel 1948, as cited in White and Bruce 1986, p. 212; Smiet 1985, p. 189; Long 1981, p. 247). The salmon-crested cockatoo was formerly traded in significant numbers, and shipments of birds from Seram transited through Ambon (the capital of the Maluku Province), where undoubtedly some birds escaped. Other scientists suggest that the cockatoos may well be wild birds (Poulsen and Jepson 1996, pp. 159–160; Marsden 1992, pp. 12–13), with the persistence of a small population in northeast Ambon (Poulsen and Jepson 1996, p. 159).

Haruku and Saparua

The status of the salmon-crested cockatoo on Haruku and Saparua is unknown (Metz 1998, p. 10), but the species may be extinct on these two islands (Metz 2002, p. 1; Snyder *et al.* 2000, p. 68). For Haruku, there is one unspecified locality and date of observation reported (Stresemann 1934, p. 16), but Poulsen and Jepson (1996, p. 160) did not find the species in 1994 or 1996. For Saparua, there is one specimen in the RMNH (Rijksmuseum van Natuurlijke Histoire (Leiden, Netherlands)) recorded in 1923 (BLI 2001, p. 1663).

For purposes of this proposal, we consider the salmon-crested cockatoo's natural range to include Seram and the three islands of Ambon, Haruku, and Saparua. Although the status of the salmon-crested cockatoo is unknown on Haruku and Saparua, the species has been reported from these islands, and we are unaware of any survey that has conclusively found that the species no longer occurs there.

Habitat

The salmon-crested cockatoo is believed to be a specialist of primary lowland forests (Kinnarid *et al.* 2003, p. 228). It occurs at altitudes between 100 and 1,000–1,200 m (328 and 3,608–3,926 ft) (BLI 2008a, p. 2; Bowler and Taylor 1993, p. 149; Juniper and Parr 1998, p. 281), but rarely occurs above 600–900 m (1,968–2,952 ft) (Cameron 2007, p. 77; Juniper and Parr 1998, p. 281; Marsden 1992, p. 11; Smiet 1985, p. 189). Marsden (1992, p. 11) found that cockatoos tended to be recorded in mature, open-canopied lowland forests with some very large, tall trees and some low vegetation. Kinnaird *et al.* (2003, p. 227) found that cockatoo abundance was significantly associated with the presence of potential nest trees (*Octomeles sumatranus*) and strangling figs (*Ficus* spp.), a potential food source. Cameron (2007, pp. 77–78) noted that island cockatoos prefer lowland forests over montane forests because lowland forests contain greater plant diversity and, thus, have a more diverse and abundant food supply. They also support larger trees, which are more likely to have cavities needed for nesting—a critical resource because cockatoos are incapable of excavating their own nest cavities. The salmon-crested cockatoo prefers flat or gently sloping terrain.

The highest densities of birds occur in little-disturbed, lowland forests below 300 m (984 ft), and the lowest densities occur in recently logged forests and in non-forested areas (Marsden 1998, p. 608; Marsden 1992, p. 9). However, Marsden and Fielding (1999, p. 444) were unable to find differences in the species' presence based on habitat associations, and Kinnaird *et al.* (2003, p. 227) found densities did not correspond closely to habitat differences across study sites. Marsden (1992, p. 11) suggested that the apparent differences in cockatoo densities between young logged forests and secondary forests, which have similar vegetation parameters, may be caused by differential trapping pressures and patterns of disturbance, differences in tree species compositions and overall habitat heterogeneity, and differences in cockatoo densities in areas before logging.

Lower densities of birds occur in transition and submontane forests and on the edges of cultivated areas. Birds also occur in open canopy forests with low vegetation and in riverine forests (Juniper and Parr 1998, p. 281). Despite trapping pressure, birds still occur in mature lowland forests near settlements (Juniper and Parr 1998, p. 281; Marsden 1992, p. 11), but they are rarely seen near human habitation (Smiet 1985, p. 189). Marsden (1992, pp. 9, 11) found cockatoos to be rare or irregular in other habitats, including plantations, grassland, rank scrub, and agricultural lands. The species previously occurred in coastal areas (Juniper and Parr 1998, p. 281), before land was converted to human uses (FAO 1981, as cited in Marsden 1992, p. 7). Small numbers of

salmon-crested cockatoo have been observed in forested hills on Ambon. No other information was available on the habitat of this species on Ambon, Haruku, and Saparua.

Topography

Seram is a densely wooded island (Metz 1998, p. 10) of 18,625 km² (7,189 mi²) (Smiet 1985, p. 183)—about the size of New Jersey (Morrison 2001, p. 1). The topography is extremely variable and the interior of the island is rugged and mostly mountainous (Kinnaird *et al.* 2003, p. 228). The island lies between latitudes 2°46′ and 3°53′ south of the Equator. It is approximately 340 kilometers (km) (211 miles (mi)) long and 55–70 km (34–43 mi) wide in the center. Its highest point is Gunung Binaiya at approximately 3,027 m (9,929 ft) above sea level. It is the second largest island in the Moluccas. This group of about 1,000 islands is also known as the Spice Islands, because they include the original home of both nutmeg (*Myristica fragrans*) and cloves (*Syzgium aromaticum*) (Edwards 1993, p. 1).

Forests

Seram's wet climate supports mainly evergreen forests (Marsden 1998, p. 606). The alluvial plains originally supported tall lowland forests characterized by the only endemic dipterocarp on the island, *Shorea selanica* ('meranti'), and also *Canarium, Elaeocarpus sphaericus, Calophyllum, Intsia,* and *Myristica* (Coates and Bishop 1997, pp. 16–17; Smiet and Siallagan 1981, p. 7). *Shorea selanica* has developed remarkable dominance in the lowland forests of north Seram, representing about 30 percent of individual trees and 76 percent of the basal area (Edwards *et al.* 1993, p. 66). The forest is relatively open-crowned with a sparse understory, with the floor being swept clean by floods during the wet season. Along the major rivers, the lowland forest is characterized by *Octomeles sumatrana, Eucalyptus deglupta, Pometia pinnata, Casuarina equisetifolia, Ficus, Litsea,* and *Eugenia* (Coates and Bishop 1997, pp. 16–17).

Climate

Most of Seram receives between 2,500 and 3,000 millimeters (mm) (97.5 and 117 inches (in)) of rain per year, with more in the east and northeast. The long monsoonal seasons (Metz 1998, p. 11; White and Bruce 1986, p. 24) and mountainous terrain affect the amount of rainfall. Annual and monthly rainfall is not uniform and varies by region (Kinnaird *et al.* 2003, p. 228). The island lies outside the main zone of cyclonic storms (Coates and Bishop 1997, p. 22). The lowlands have a humid tropical climate with temperatures at sea level of 25–30 degrees Celsius (°C) (77–86 degrees Fahrenheit (°F)). Temperature decreases with altitude, with a fall of approximately 6 °C (10.8 °F) for every rise of 1,000 m (3,280 ft), leading to a marked temperature gradient within the mountain areas (Edwards 1993, p. 6).

Land use

The human population of Seram is concentrated in low-lying areas along the coast and in the west. The mountainous interior supports very few villages (Edwards 1993, p. 7). The majority of Seram is lowland forest or montane forest (see Table 1). While only about 11 percent of the island has been converted to agricultural lands, settlements, and plantations or is considered unproductive, logging concessions cover nearly 50 percent of the island. About 85 percent of Seram lies below 600 m (1,968 ft) and another 10 percent lies between 600 and 1,000 m (1,968 and 3,280 ft). Within this elevation where cockatoos occur, "* * * most of the forest has been classified as production or conversion forest, categories that permit land clearing and forest disturbance" (Kinnaird *et al.* 2003, p. 230).

TABLE 1—HABITAT AND LAND USE FOR SERAM AND ESTABLISHED AND PROPOSED PROTECTED AREAS

[Data are based on landsat images from late 1989 and early 1990 (NP = National Park; NR = Nature Reserve) (Kinnaird *et al.* 2003, p. 230)]

Habitat/land use	Area			
	Seram	Manusela NP	Gunung Sahuwai NR	Proposed Wai Bula NR
Lowland Forest	14,026.5 km² (5,414.2 mi²).	1,522.5 km² (587.7 mi²)	118.9 km² (45.9 mi²)	561.8 km² (216.9 mi²).
Mangrove Forest	77.6 km² (30 mi²)			9.6 km² (3.7 mi²).
Montane Forest	1,065.3 km² (411.2 mi²)	693.9 km² (267.8 mi²).		
Swamp Forest	203.5 km² (78.6 mi²)			14.6 km² (5.6 mi²).
Water Body	1.2 mi² (3.0 km²).			
Agriculture	789.1 km² (304.6 mi²)	50 km² (19.3 mi²)		9.6 km² (3.7 mi²).
Plantation	22.0 km² (8.5 mi²).			
Settlement	21.3 km² (8.2 mi²)	3.2 km² (1.2 mi²)		0.5 km² (0.2 mi²).
Unproductive Lands	1,082.2 km² (417.7 mi²)	53.6 km² (20.7 mi²)	3.9 km² (1.5 mi²)	
Total	17,288.7 km² (6,676.0 mi²).	2,323.2 km² (896.8 mi²)	122.8 km² (47.4 mi²)	596.1 km² (230.1 mi²).

Important Bird Areas (IBAs)

BLI (2008b, p. 2) has identified five IBAs that include the salmon-crested cockatoo. A site is recognized as an IBA when it meets criteria "* * * based on the occurrence of key bird species that are vulnerable to global extinction or whose populations are otherwise irreplaceable." These key sites for conservation are small enough to be conserved in their entirety and large enough to support self-sustaining populations of the key bird species. IBAs are a way to identify conservation priorities (BLI 2008j, pp. 1–2). The following briefly describes the IBAs for the salmon-crested cockatoo.

Gunung Sahuwai

Located on the western peninsula of Seram, Gunung Sahuwai contains 122.8 km² (47.4 mi²) of land that was declared a Nature Reserve on November 30, 1993 (SK Menteri Kehutanan No. 805/Kpts–II/1993) (BLI 2008c, p. 2). The Nature Reserve contains 96.8 percent lowland forest and 3.2 percent unproductive lands (see Table 1) (Kinnaird *et al.* 2003, p. 230). The number of cockatoos here is unknown. The coastal area contains 14 settlements. Most people work as farmers and fishermen. The main commodities are cloves, nutmeg, and coconut for copra. The local people hunt and collect forest products. Conservation concerns for the salmon-

crested cockatoo relate to the clearance of natural habitat for plantation, shifting agriculture, and collection of birds (BLI 2008c, pp. 1–2).

Gunung Salahutu

The habitat is forest, and the topography is hilly up to 1,038 m (3,405 ft). The cockatoo was found in this area at one time, but is probably extinct in this area now. The coastal area contains two villages. Most of the people work as dry land farmers and fishermen. The main commodities are clove, nutmeg, cacao, and marine products. Conservation concerns for the salmon-crested cockatoo relate to forest clearance for plantation, firewood collection, and hunting of animals for consumption or pets (BLI 2008d, pp. 1–2).

Manusela

This area consists of forests and wetlands (BLI 2008e, pp. 1–2). Manusela National Park is located in the central part of Seram and stretches from the north coast to within 5 km (3 mi) of the south coast (Edwards 1993, p. 6). It is 2,323.2 km^2 (896.8 mi^2) in size and covers approximately 10 to 11 percent of Seram (BLI 2008e, p. 2; Kinnaird *et al.* 2003, p. 228; Bowler and Taylor 1993, p. 158; Marsden 1992, p. 7; Smiet and Siallagan 1981, p. 3). It was declared a national park on October 14, 1982 (SK Menteri Pertanian No. 736/Mentan/X/1982) (BLI 2008e, p. 2). Based on landsat images from late 1989 and early 1990, habitat and land use for Manusela National Park can be summarized as: 65.5 percent lowland forest; 29.9 percent montane forest; and 4.6 percent agriculture, settlement, and unproductive lands (see Table 1) (Kinnaird *et al.* 2003, p. 230). Approximately 26 percent of the park is above 1,000 m (3,608 ft), an altitude where the salmon-crested cockatoo generally does not occur, and only 27 percent is below 500 m (1,640 ft), an altitude preferred by the salmon-crested cockatoo (Marsden 1992, p. 7). A road has been built through the park, which increases the risks of logging (Metz 1998, p. 10). Five villages of indigenous people exist as an enclave of the park. Most of the people work as dry land farmers; they also hunt and collect forest products, such as sago, rattan, resin, eaglewood, and parrots (BLI 2008e, p. 1). In 1980, 999 people lived within the park boundaries, and 19,102 lived within 10 km (6 mi) of its boundaries (Smiet and Siallagan 1981, App. 6). Clearing of the land for agriculture and gardens has resulted in a patchwork of cleared fields, secondary vegetation (including large bamboo thickets), old growth forests, and undisturbed primary forests. Conservation concerns for the salmon-crested cockatoo relate to logging, road development, encroachment by plantation companies, mining (Monk *et al.* 1997, as cited in BLI 2008e, p. 2), shifting agriculture, and parrot catching for trade (BLI 2008e, pp. 1–2).

Pegunungan Taunusa

The habitat is forest and the area has a mountain with the highest peak in Seram. The southern coastal area contains five villages. Most of the people work as farmers and fishermen. Main products are coconut for copra, clove, and cacao (BLI 2008f, p. 1). The Service was unable to find information on the number of salmon-crested cockatoos in this area or activities that may be affecting the conservation of the species in Pegunungan Taunusa.

Wai Bula

The habitat is forest in northeastern Seram. BLI (2008f, p. 1) estimates that Wae Wufa, an area inside Wai Bula that is primary lowland and lower montane evergreen forests, has around 40–60 salmon-crested cockatoos. Approximately 596.1 km^2 (230.1 mi^2) of Wai Bula was proposed as a Nature Reserve in 1981, but the area has never been officially designated as a reserve (Kinnaird *et al.* 2003, p. 228). Land use for the proposed Nature Reserve can be summarized as follows: 94.2 percent lowland forest; 2.5 percent agriculture and settlement; 2.4 percent swamp forest; and 1.6 percent mangrove forest (see Table 1). Based on density estimates derived from surveys in western Seram, researchers estimated that the area provides habitat for a minimum of 2,500 cockatoos (Kinnaird *et al.* 2003, pp. 230, 233) (see Factor A for discussion). This estimate differs significantly from the number of cockatoos estimated by BLI to occur inside Wae Wufa. We were unable to reconcile these estimates because we could not find information on the area of Wae Wufa, how much of the cockatoo's suitable habitat within Wai Bula occurs in Wae Wufa, and the basis for the BLI estimate. The coast contains four villages. Most people work as farmers and fishermen. The main plantation products are coconut for copra, cacao, and coffee. The conservation concern for the salmon-crested cockatoo relates to logging (BLI 2008g, pp. 1–2).

Natural History

Behavior

The salmon-crested cockatoo is most active in early morning and late afternoon (Metz *et al.* 2007, p. 36; Juniper and Parr 1998, p. 281), calling loudly when leaving and returning to roost. The cockatoo's call is a wailing cry, which can be heard from a distance of 1 km (0.6 mi), and roosts can easily be located due to the noise. The species is shy and flies off when disturbed. Birds move slowly through the canopy in the early morning and are usually not seen or heard during the heat of the day. They are found in groups of up to 16 birds, although the size of non-breeding flocks appear to have been dramatically reduced due to the recent population decline (Juniper and Parr 1998, p. 281). They fly using a few rapid wing beats, followed by gliding, and then a few more wing beats (Juniper and Parr 1998, p. 281; Forshaw 1989, p. 141).

Food

This species feeds on fruit of the kenari tree (*Canarium commune, C. vulgare,* and *C. indicum*) (Metz *et al.* 2007, p. 37), nuts, seeds, berries, and insects (Forshaw 1989, p. 141; Juniper and Parr 1998, p. 281). Their abundance is positively related to the density of strangling figs, a potentially important food resource (Kinnaird *et al.* 2003, p. 233). Research by O'Brien *et al.* (1998, p. 668) showed that figs may be a keystone plant resource for many fruit-eating birds. On the average, figs contain calcium levels 3.2 times higher than other fruits, promoting eggshell deposition and bone growth. Salmon-crested cockatoos are suspected of taking *Pandanus* spp. fruits (Bishop in prep., as cited in BLI 2001, p. 1665). They pick larvae from fallen, rotting tree trunks (Metz *et al.* 2007, p. 37). They also eat young coconuts (*Cocos nucifera*) by chewing through the tough outer covering to get at the pulp and water inside (Juniper and Parr 1998, p. 281; Forshaw 1989, p. 141; Wallace 1864, p. 279). In general, island cockatoos are thought to need to exploit all the available food in order to maintain a healthy population because islands typically contain fewer plant species and the quantity of food is restricted by an islands' relatively small size (Cameron 2007, p. 83).

Breeding

Its favored nest tree is *Octomeles sumatranus* (Kinnaird *et al.* 2003, p. 230). During times of nest building, brooding, and fledging, birds stay close to the nest tree (Metz *et al.* 2007, p. 36). Courtship display can last up to 20

minutes, with the male and female perched in the top of an emergent or dead forest tree, raising and lowering their crests, fanning their large face and neck feathers forward to increase the size of the head (Cameron 2007, p. 57), calling loudly, breaking twigs, and making short, weak, fluttering flights. The nest is a high hole in a mature tree (Juniper and Parr 1998, p. 281). The salmon-crested cockatoo removes the bark immediately surrounding the entrance to help prevent predators, such as snakes or monitor lizards, from gaining access to the eggs or chicks, and may also clear the surrounding foliage perhaps to have a better view for the brooding hen. The nest site is fiercely guarded from competitors, such as the Eclectus parrot (*Eclectus roratus*) (Metz *et al.* 2007, p. 37).

Little is known about seasonality and breeding biology of the salmon-crested cockatoo in the wild (Kinnaird *et al.* 2003, p. 228), or other demographic information, such as reproductive effort and success and age-specific mortality rates—information that is important to determine where the primary weak points in the life equation lie (Snyder *et al.* 2000, p. 9). The cockatoo is thought to breed between July and August or September, and probably a second time at the beginning of the year (Metz and Zimmermann n.d., p. 1). Stresemann (1914, p. 86) observed a pair in a nesting cavity about 25 m (82 ft) up the trunk of a living tree in early May. The cockatoo lines the cavity with wood chips, and usually lays two white eggs, although only one chick is raised (Metz and Zimmermann n.d., p. 1). Both parents help to incubate the eggs during the 28-day incubation period. Young birds take 4–5 years to reach maturity (Juniper and Parr 1998, p. 281).

Population Estimates

Seram—Historical Population Estimates

Historically, there are few quantitative observations of this species in the wild. In 1864, Wallace (1864, p. 279) described the salmon-crested cockatoo as "abundant" on Seram. In 1911, Stresemann (1914, p. 86) reported that the species was fairly common in coastal regions. The species was regarded as locally common in 1970 (Juniper and Parr 1998, p. 281). During 1980 and 1981 (Forshaw 1989, p. 141), Smiet (1985, p. 189) observed that this species was locally common in primary forests up to 900 m (2,952 ft) in the interior and in undisturbed forests, where 10 to 16 birds were seen congregating in roosting trees. He did not see any birds on the western part of the island, although the cockatoo was said to be common there until about 1970. In 1980, small flocks were observed in the south of the island (White and Bruce 1986, p. 212), and cockatoos were frequently seen throughout Manusela National Park below 900 m, except in the southern part of the Mual Plains in the center of the park where they were not common (Smiet and Siallagan 1981, p. 9). In September 1983, Bishop (1992, p. 2) observed four cockatoos in secondary woodland in southwest Seram.

Rangers at the Manusela National Park commented on a dramatic decline in the species in the mid-1980s (Collar and Andrew 1988, p. 69). By 1987, it was the rarest parrot in Manusela National Park (Bishop 1992, p. 2). Due to the international pet trade, Bishop considered the species to be endangered and in need of critical management to avoid imminent extinction (Bishop 1992, p. 1). Between July 20 and September 25, 1987, an Operation Raleigh team found the species to be "very scarce and absent from large tracts of suitable habitat" in Manusela National Park (Bowler 1988, p. 6). During 40 days of field work, they made 54 sightings, resulting in a maximum of 20 individual birds in prime habitat. In addition, birds were observed either singly or in pairs, never in flocks. Encounter rates were the lowest of any parrot species at 0.3 birds per hour in lowland rain forests around Solea at about 100 m (328 ft) and 0.1 per hour in the Kineka area at 600–900 m (1,968–2,952 ft) (Bowler and Taylor 1989, p. 17; Bowler 1988, p. 6). Marsden (1992, pp. 11–12) suggested that the densities of cockatoos, which Bowler and Taylor found in the Manusela National Park enclave, may be naturally low because the forest has been heavily disturbed and the area is at the upper end of the species' altitudinal range. He found it difficult to relate Bowler and Taylor's low figures for lowland forests around Solea to what he found in 1989 (see below). BLI also questioned the validity of the numbers, because Bowler and Taylor are now judged to have worked mainly at higher elevations in Manusela (BLI 2001, pp. 1664, 1668). Metz (1998, p. 10) suggested that the stronghold of this cockatoo is likely on Seram, almost exclusively outside of the borders of the national park.

During 5 weeks beginning December 19, 1989, Marsden (1992, pp. 7–8; Marsden 1998, p. 606) collected field data in Manusela National Park and in lowland habitats in central and northeast Seram, using the variable circular plot method to estimate densities of the salmon-crested cockatoo. Encounter rates were 1.0 bird per hour in primary forests, 2.5 birds in disturbed primary forests, and 0.4 birds in secondary and in recently logged forests. While cockatoo densities were similar in primary (9.1 birds per 1 km^2 (0.386 mi^2)) and disturbed primary forests (9.8 birds), densities were lower in secondary forests (6.4 birds), and much lower in recently logged forests (1.9 birds), suggesting that large-scale logging might adversely affect the species' population.

Between July and September 1996, the Wai Bula '96 (a conservation expedition from Cambridge University and Universitas Pattimura, Ambon) found the salmon-crested cockatoo to be widely dispersed in northeast Seram in the Wae Fufa Valley (primary lowland and lower montane evergreen forests) and in degraded coastal forests near Hoti (coastal secondary lowland forests), where pairs and small flocks were a common sight. They suggested that the bulk of the population probably occurs in eastern Seram (Isherwood *et al.* 1998, p. 18). Juniper and Parr (1998, p. 281) reported that the world population was "thought still to be above 8,000."

Seram—Recent Population Estimates

The most recent research (Kinnaird *et al.* 2003, p. 232) estimated the total salmon-crested cockatoo population to be 110,385 birds (with confidence limits of a minimum 62,416 and a maximum of 195,242). Based on the research assumptions (see below), we agree with BLI (2001, p. 1664) that "* * * the figure of 62,400 is chosen as the appropriate population figure."

These numbers were generated by joint population surveys conducted by the Wildlife Conservation Society Indonesia Program, BLI Indonesia Program, and Pelastarian Hutan Dan Konservasi Alam, Ministry of Forestry, Government of Indonesia in May–September 1998. Cockatoo censuses were conducted at seven sites in western and central Seram using line-transect methods (Kinnaird *et al.* 2003, pp. 228, 230, 234). Five of the sites were considered primary lowland forest and two had been previously logged or were disturbed by humans (Kinnaird *et al.* 2003, p. 228). Cockatoos were observed at all sites as single individuals or pairs. Estimates of density varied widely among locations, ranging from 0.93 birds per 1 km^2 (0.386 mi^2) at Kawa to 17.25 birds per 1 km^2 at Roho. The mean density was 7.87 birds per 1 km^2, which was considered indicative of all sites because it included estimates from primary and logged forests. The researchers were unable to complete the census before the outbreak of civil war; thus, data from the western part of

Seram were used to estimate the number of cockatoos on all of Seram.

The population estimate was generated by working with GIS-based estimates of lowland forest habitat on Seram (14,026 km² (5,414.2 mi²)) below 600 m (1,968 ft). This is based on the assumption that all lowland forests provide adequate habitat for cockatoos and that densities remain constant across the island (Kinnaird *et al.* 2003, p. 232). Because these assumptions are unlikely, Kinnaird (2000, p. 15) explained the scenarios considered by the researchers. Cockatoos are fairly tolerant of degraded habitat, but they still need nesting trees and have a preference for areas with lots of large strangling figs. The first scenario involved the number and extent of logging concessions operating on Seram during the 10-year-period from 1989–1999, which resulted in a reduction of 1,200 km² (463 mi²) of lowland forest habitat for cockatoos. The population estimate still hovered between 90,000 and 100,000 birds. The second scenario looked at continued logging and habitat loss during the next decade, projecting that the population size would decline by another 10 percent. These two estimates may have underestimated cockatoo population size because many logging concessions are not working at full capacity. On the other hand, the estimates ignored additional losses due to the capturing of birds for the pet trade. The population estimate also ignored the variability in how logging companies harvest their concessions (*i.e.,* greater or less than the legal maximum intensity). If logging concessions harvest timber in a conventional manner of up to 1,000 hectare (ha) (2,470 acre (ac)) per year, Kinnaird *et al.* (2003, p. 233) assumed that cockatoos will persist but at possibly lower densities.

In 1985, Smiet (1985, pp. 193–194) suggested that the relative resilience of most Moluccan parrots under trade pressure and habitat destruction can be attributed to a combination of factors, including: (1) A great reproductive capacity (especially in the smaller species); (2) adaptability to habitat alteration (which tends to provide a relative abundance of flowering and fruiting plants); (3) persistence of some original, undisturbed habitat; and (4) island isolation and lack of predators, parasites, and competitive species. Metz (2005, p. 34), however, cautioned that the current population estimate should not be a "cause for complacency." He suggested that the number of birds capable of breeding, or the breeding success rate, might be low for this species because: They have a long life span, and many birds might be past breeding age; there is a very high poaching pressure and trappers mostly take adult birds, which depletes the number of breeding birds; and the salmon-crested cockatoo has a slow reproductive cycle and unknown, but possibly low, fledging success rate. These opinions point out the need for further research on this species to better understand its population size and its ability to adapt to the habitat destruction and trade that is occurring on Seram.

Ambon

Very small numbers of salmon-crested cockatoos are thought to occur in remaining natural forests in the more remote regions of Ambon (Poulsen and Jepson 1996, p. 160). While Smiet (1985, p. 189) lived on the island from 1980 to 1981, he did not see the species there; however, he wrote that the species was said to be common on Ambon until about 10 years ago. In 1992, Marsden (1992, pp. 12–13) reported seeing eight salmon-crested cockatoos and three unidentified cockatoos during brief searches of remaining forest patches on Ambon. He suggested that most free flying salmon-crested cockatoos on Ambon may be wild birds, either resident and possibly breeding or visiting birds from Seram. Local people told him that cockatoos were still present in the area, but rare in other forested areas on the island. Poulsen and Jepson (1996, pp. 159–160) confirmed that wild populations of salmon-crested cockatoos occur on Ambon. On May 28 and June 11, 1995, they observed six to eight cockatoos, in forested hills behind Hila on the north coast of the Hitu Peninsula, overlooking a forested valley at about 300 m (984 ft) and in forest edge around shifting cultivation at about 500 m (1,640 ft).

Conservation Status

The salmon-crested cockatoo is protected from capture and trade under Indonesian laws (Republic of Indonesia Law No. 5, 1990, and Law No. 7, 1999) (Kinnaird *et al.* 2003, p. 228; Kinnaird 2000, p. 14). Intentional violations may lead to imprisonment of up to 5 years and fines up to 100 million IDR (Indonesian rupiah) (which amounts to approximately 10,000 USD (U.S. dollar)). Negligent violations may lead to imprisonment of up to 1 year and fines up to 50 million IDR (5,000 USD). The government may seize and confiscate specimens of protected animals. The Department of Forest Protection and Nature Conservation is responsible for implementing the law, and the Natural Resources Conservation Agency, working with police, Customs, and other enforcement agencies, is responsible for enforcing the law (Shepherd *et al.* 2004, p. 4).

The species is listed on the IUCN (International Union for Conservation of Nature) Red List as 'Vulnerable' because it has suffered a rapid population decline as a result of trapping for the pet bird trade and because of deforestation in its small range. BLI (2004, p. 1) projects the decline will continue and perhaps accelerate. The current population is estimated at 62,400 individuals (BLI 2001, p. 1664), with a decreasing population trend; the decline for the past and the future 10 years or 3 generations is estimated at 30 to 49 percent (BLI 2008b, p. 1). The current trend is justified by the suspected rapid decline of the species due to ongoing and prolific capture for the Indonesian domestic pet trade (BLI 2008b, p. 2). Ongoing threats are habitat loss and degradation due to selective logging and clear-cutting, agriculture, infrastructure development (settlement and hydroelectric projects), and harvesting (hunting and gathering for the domestic and international pet trade) (BLI 2004, pp. 1–2).

The cockatoo is also protected by CITES, one of the most important means of controlling international trade in animal and plant species threatened by trade. CITES is an international agreement through which member countries, or Parties, work together to ensure that international trade in CITES-listed animals and plants is not detrimental to the survival of wild populations by regulating import, export, and re-export. Although almost all Psittaciformes species, including the salmon-crested cockatoo, were included in CITES Appendix II in 1981 (CITES 2008a, p. 1), the species was transferred to CITES Appendix I effective January 18, 1990, because populations were declining rapidly due to uncontrolled trapping for the international pet bird trade (CITES 1989a, pp. 1–7). An Appendix–I listing includes species threatened with extinction whose trade is permitted only under exceptional circumstances, which generally precludes commercial trade. The import of an Appendix–I species requires the issuance of both an import and export permit. Import permits are issued only if findings are made that the import would be for purposes that are not detrimental to the survival of the species in the wild and that the specimen will not be used for primarily commercial purposes (CITES Article III(3)). Export permits are issued only if findings are made that the specimen was legally acquired and trade is not

detrimental to the survival of the species in the wild (CITES Article III(2)). The United States and Indonesia, along with 173 other countries, are members to CITES (CITES 2009, p. 1).

The import of salmon-crested cockatoos into the United States is also regulated by the Wild Bird Conservation Act (WBCA) (16 U.S.C. 4901 *et seq.*), which was enacted on October 23, 1992. The purpose of the WBCA is to promote the conservation of exotic birds by ensuring that all trade involving the United States is sustainable and is not detrimental to the species. Permits may be issued to allow import of listed birds for scientific research, zoological breeding or display, or personal pet purposes when certain criteria are met. The Service may approve cooperative breeding programs and subsequently issue import permits under such programs. Wild-caught birds may be imported into the United States if they are subject to Service-approved management plans for sustainable use. At this time, the salmon-crested cockatoo is not part of a Service-approved cooperative breeding program and does not have an approved management plan for wild-caught birds (FWS 2008, p. 1).

The IUCN Status Survey and Conservation Action Plan 2000–2004 for Parrots (Snyder *et al.* 2000, p. 66) identified a need to clarify the status of the salmon-crested cockatoo in the wild, including: (1) Determining the species' relative abundance in each habitat type, and (2) collecting information on the size and distribution of habitat types, trapping, timber extraction, and breeding success of cockatoos in primary and secondary forests because it is unknown if the salmon-crested cockatoo will survive in degraded secondary forests in the long term. At present, inadequate information on the species, its habitat, and the effects of human activities on the species makes it difficult to make recommendations on regional development, such as reserve boundaries, land-use zoning, and possible new provincial forestry and agriculture policies, to ensure the species' survival. The information would also provide a baseline for monitoring and determining the degree to which trade affects the status of this species (Snyder *et al.* 2000, pp. 66, 69).

Summary of Factors Affecting the Salmon-Crested Cockatoo

Section 4 of the Act and its implementing regulations (50 CFR 424) set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. Listing actions may be warranted based on any of the above threat factors, singly or in combination. Each of these factors for the salmon-crested cockatoo is discussed below.

Factor A. The Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range

The lowland forest habitat of the salmon-crested cockatoo is being impacted by logging (including the failure to use wise logging practices during selective logging), illegal logging, conversion of forests to agriculture and plantations, transmigration of people, oil exploration, and infrastructure development.

Logging

Commercial timber extraction is listed by the IUCN Red List to be a continuing major threat to the salmon-crested cockatoo, with a medium impact and a slow decline of the species (BLI 2008b, p. 3). Research that assessed a species-area relationship suggested that deforestation affects endemic bird species restricted to single islands most severely (Brooks *et al.* 1997, p. 392).

Between 2000 and 2005, Indonesia's forest cover declined by more than 90,000 km^2 (34,740 mi^2). Lowland areas, which offer important habitat for Indonesia's cockatoos, have been the most severely impacted (Cameron 2007, p. 177; Rhee *et al.* 2004, chap. 1 p. 2). On the islands of Sumatra and Kalimantan (Indonesian islands to the far west of Seram), the World Bank predicted that all lowland rain forests outside of protected areas would be degraded by 2005 and 2010, respectively (Rhee *et al.* 2004, p. xviii). In many areas of Indonesia, most commercially valuable forests have already been logged. Thus, major commercial logging enterprises are now focused on islands in Maluku Province, including Seram (BLI 2008k, p. 6; Smiet 1985, p. 181).

The impact of logging has steadily increased on Seram, with logging becoming more intense during the 1990s (BLI 2008k, p. 6). Deforestation in some areas has been extensive through selective logging of *Shorea* spp. (Ellen 1993, p. 201), such that by 2001, about a fifth of the original forest cover had been cleared (Morrison 2001, p. 1), with most of the coastal areas converted to grassland, agriculture, plantations, or scrub (Marsden 1992, p. 7). Although large areas of contiguous, intact forests remain (Morrison 2001, p. 1), 50 percent of forests, which are spread over the island, are under logging concessions. The north dipterocarp forests are still dominated by the endemic *Shorea selanica,* a tree especially vulnerable to logging as it grows tall and straight and is much favored by Western and Japanese markets (Edwards 1993, p. 9). Once the primary forest is logged, experience on nearby Indonesian islands shows that secondary forest is generally converted to other uses or logged again rather than being allowed to return to primary forest (Barr 2001, pp. 64, 67; Jepson *et al.* 2001, p. 859; Grimmett and Sumarauw 2000, p. 8).

Selective logging is the primary technique for the extraction of timber in Indonesia (BLI 2008k, p. 6). In selective logging, the most valuable trees from a forest are commercially extracted (Johns 1988, p. 31), and the forest is left to regenerate naturally or usually with some management until being subsequently logged again. Johns (1988, p. 31), looking at a West Malaysian dipterocarp forest, found that mechanized selective logging in tropical rain forests, which usually removes a small percentage of timber trees, causes severe incidental damage. The extraction of 3.3 percent of trees destroyed 50.9 percent of the forest. He concluded that this type of logging reduced the availability of food sources for frugivores (fruit-eaters). Edwards (1993, p. 9) observed a similar problem on Seram. Timber companies, operating under a selective logging system, caused considerable damage to the surrounding forest, both to trees and soil. Forests selectively logged 15 years before had an open structure with skeletons of incidentally killed trees, serious gulley erosion, and vegetation on waterlogged sites that had been compacted by heavy vehicles. Furthermore, commercial logging uses a network of roads, which can lead to secondary problems (BLI 2008k, p. 6), such as providing access to trappers of parrots.

Since selective logging targets mature trees, it can have a disproportionate impact on hole-nesters, such as cockatoos, because fewer nest sites remain (BLI 2008k, p. 6). Unsustainable logging practices that destroy the forest canopy also reduce habitat available to the salmon-crested cockatoo. Kinnaird *et al.* (2003, pp. 233–234) found that the

abundance of cockatoos was positively related to the density of its favored nest tree, *Octomeles sumatranus,* and strangling figs, a potentially important food resource. These trees would be impacted by logging, emphasizing the need to implement wise logging practices, such as those based on reduced-impact logging techniques. However, these techniques, which are recommended under Indonesia's selective logging system, are seldom applied because of the lack of control over harvesting practices, limited understanding of how to implement the measures, and high financial costs (Sist *et al.* 1998, p. 1). Specifically, the pre- and post-logging inventories are not conducted properly or are not reported truthfully; over-cutting above the annual plan occurs; frequent cutting outside approved boundaries occurs; re-logging is more frequent than recommended; and supervision by the Ministry of Forestry has been ineffective (Thompson 1996, p. 9).

The salmon-crested cockatoo is dependent on little-disturbed lowland forests. In a field study conducted beginning December 19, 1989, for 5 weeks, Marsden (1992, pp. 7–13) looked at the distribution, abundance, and habitat preferences of the salmon-crested cockatoo on Seram. Results suggested that while cockatoo densities were similar in primary and disturbed primary forests, densities were lower in secondary forests, and much lower in recently logged forests (Marsden 1992, p. 9). In total, 84 cockatoos were recorded at 132 stations, either singly or in pairs, on 34 occasions. Groups of more than 4 birds were recorded 3 times, with a maximum group size of 10. Although cockatoos were found at different densities in different land-use types, more cockatoos were present where habitat alterations occurred on a small scale. Cockatoos tended to be recorded in mature, open-canopied lowland forests with some very large, tall trees and some low vegetation. Most significantly, Marsden found that there may have been a reduction of the cockatoo population by about 700 birds for each 100 km^2 (86 mi^2) of Seram's primary forests that had been selectively logged in the last 6 years. Similarly, the conversion of 100 km^2 of locally disturbed secondary forests to plantation could result in the loss of around 600 birds (Marsden 1992, p. 12).

Marsden (1998, pp. 605–611) also looked at changes in bird abundance following selective logging on Seram. Field work was conducted in forested areas in the central and northeast parts of the island. Logged forests usually had sparser canopy and mid-level vegetation cover and denser ground cover than unlogged forests (Marsden 1998, pp. 605, 607–608). Using a point count method to estimate population densities, Marsden (1998, p. 608; 1999, p. 380) found that salmon-crested cockatoo density estimates in unlogged forests below 300 m (984 ft) were more than double those in logged forests. Because the cockatoo is caught for the pet trade, Marsden was unable to separate the effects of habitat change, such as loss of nest holes, from possible effects of logging on capture rates (for example, increased accessibility for trappers to forests by access roads) (Marsden 1998, p. 610). Although Kinnaird *et al.* (2003, p. 233) found the highest cockatoo densities in primary forest habitat with good structure and lower densities in logged or disturbed sites, they did not find a statistically significant difference in cockatoo densities between logged and unlogged forests. They surmised this may have been because of the intensity of logging or, more likely, reflected the mosaic of habitat types found within their sampling sites. They speculated that there is a continuum of cockatoo densities in logged forests depending on the intensity of logging and access provided to trappers.

Logging concessions are spread over Seram, except there are no concessions in Gunung Sahuai Nature Reserve and only 15 percent of Manusela National Park is under concessions (Kinnaird *et al.* 2003, p. 231). About half the island (8,271 km^2 (3,193 mi^2)) is held within logging concessions, with more than 75 percent within lowland habitat favored by the salmon-crested cockatoo (Kinnaird *et al.* 2003, pp. 227, 233). This means that less than 30 percent of the island's lowland forests (5,096 km^2 (1,967 mi^2)) is unoccupied by logging concessions. In 1998, Kinnaird *et al.* (2003, pp. 233–234) were unable to find out the area of land scheduled for logging. However, Kinnaird (2000, p. 15) was able to obtain information from the Ministry of Forestry that showed 12 logging concessions had been operating on Seram during the 10-year period from 1989–1999. If the concessions have been logged at a maximum intensity of 10 km^2 (3.86 mi^2)/year/concession and logging was conducted in a conventional manner that results in 70 percent damage to the canopy, lowland forest habitat for cockatoos would be reduced by 1,200 km^2 (463 mi^2), or 8.5 percent, in 10 years. The researcher concluded in 2000 that overall the loss of habitat has not reached a level where it is perceived as a serious threat to cockatoos. However, the cockatoo remains under threat (Kinnaird 2000, p. 15). We have no reason to believe that the effects of logging on the species will be ameliorated in the foreseeable future, but may increase because commercial logging enterprises are now focused on the Maluku Province, including Seram.

The researchers were forced to leave the island because of civil unrest. They suggested that the pressure for land conversion will accelerate dramatically once social and economic stability returns to Seram, especially in the lowlands, and this will be made worse by the 1999 regional autonomy laws that allow for local authorities to determine licensing of forest concessions and exploitation of natural resources. They concluded that the proper management of Seram's logging concessions would determine the future of the salmon-crested cockatoo (Kinnaird *et al.* 2003, p. 234).

Approximately 14 percent of Seram's forests (or 11.5 percent of lowland forests) are protected in Manusela National Park (2,216.4 km^2 (855.5 mi^2)) and Gunung Sahuwai Nature Reserve (118.9 km^2 (45.9 mi^2)). In Manusela National Park, 15 percent of the forest is within logging concessions. In 1981, Smiet and Siallagan (1981, pp. 11–12, 22) reported that large patches of forest in the coastal region of the Mual Plains had been disturbed by logging activities—forests along the southeastern boundary of the park had been cleared up to 400 m (1,312 ft) and planted with clove and coconut plantations. They advocated the development of a buffer zone between the park and the densely populated coastal area because more and more forests at increasing altitudes were being cleared. Kinnaird *et al.* (2003, p. 233) estimated that the protected areas in Seram provide habitat for a minimum of 7,300 salmon-crested cockatoos based on density estimates derived from their surveys. However, logging has recently occurred inside Manusela National Park, and, once logging has concluded, there are pressures to change the land use to agriculture or plantations (BLI 2008k, p. 7). Kinnaird *et al.* (2003, p. 233) also estimated that the proposed Wai Bula Nature Reserve, 561.8 km^2 (216.9 mi^2) of lowland forests located in the northeastern part of Seram, provides habitat for a minimum of 2,500 cockatoos. We believe that this population estimate, which is based on the availability of suitable habitat, may be an overestimate because the Wai Bula area is currently not protected (it was proposed as a nature reserve in 1981 and the probability of it being officially designated is now low) and 93 percent of the area is under logging concessions.

Illegal Logging

Illegal logging is considered to be a leading cause of forest degradation in Indonesia (Rhee *et al.* 2004, chap. 6 p. 7). It is pervasive, and the Indonesian government has been unable to enforce its own forest boundaries (Barr 2001, p. 40). Illegal logging includes overharvesting beyond legal and sustainable quotas, harvesting of trees from steep slopes and riparian habitat, timber harvesting and land encroachment in conservation areas and protection forests, and falsification of documents. Overexploitation of the forests and illegal logging are driven by the wood-processing industry, which consumes at least six times the officially allowed harvest (Rhee *et al.* 2004, pp. xvii, chap. 6 p. 8). Illegal logging in the national parks is also reported with regularity, and the persons involved are armed and ruthless (Whitten *et al.* 2001, p. 2).

Although the Indonesian government issued Presidential Instruction No. 4/2005 to eradicate illegal logging in forest areas and distribution of illegally cut timber throughout Indonesia (see Factor C) (FAOLEX 2009, p. 1), illegal logging continues. The Center for International Forestry Research estimated that between 55 and 75 percent of logging in Indonesia is illegal (U.S. Agency for International Development (USAID) 2004, p. 1). Contributing factors include poor forest governance, rapid decentralization of government, abuse of local political powers, complicity of the military and police in some parts of the country, inconsistent enforcement of the law, and dwindling power of the central government (USAID 2004, pp. 3, 9). In December 2000, Jepson *et al.* (2001, pp. 859–861) found illegal logging crews operating freely in protected areas and forest concessions in Sumatra and Kalimantan, Indonesia. Jepson *et al.* (2001, pp. 859–861) also claimed that local government officials were in collusion with illegal loggers by turning a blind eye to the practice or providing permits for timber transport. Some government officials, who wanted to stop illegal logging, faced serious intimidation. Jepson *et al.* concluded that illegal logging was becoming semi-legal and the de facto arrangement for governing Indonesia's forests.

Conversion of Forests to Agriculture and Plantations

Indonesia is a rapidly developing country with a projected population of 235 million by 2015 (Snyder *et al.* 2000, p. 59). A growing population on Seram has converted forest into cultivated land, with human settlements and plantations typically located in lowland coastal areas (Smiet 1985, pp. 181, 183). Based on data from landsat images from late 1989 and early 1990 (Kinnaird *et al.* 2003, p. 230), land use in Seram is as follows: 4.6 percent in agriculture, 0.1 percent in plantations, and 0.1 percent in settlements (see Table 1 above). Although these percentages are low, forests continue to be converted for agriculture and plantations.

Near the coast, forests have been replaced with plantations of coconut, oil palm, and spices. Inland, forests on rich alluvial soil, once timbered, are liable to be converted to agricultural fields. Part of the Indonesian government's long-term planning strategy is to develop more efficient agriculture through improved and appropriate techniques to help alleviate poverty. If the plan is carefully implemented, improved agricultural techniques could reduce pressure on areas of natural habitat (BLI 2008k, pp. 7–8). However, Snyder *et al.* (2000, p. 66) cautioned that, as most of Seram's forests are under timber concessions, the island's development priority could mean that forests over good soil may be converted to wet rice cultivation and other crops, a habitat in which the salmon-crested cockatoo is unable to exist (Snyder *et al.* 2000, p. 66).

Approximately 6,220 km^2 (2,401 mi^2) of Seram's lowland forest is slated for conversion to agriculture or plantations (45 percent within logging concessions). By 2028, most of this land will probably be converted to these uses that provide no habitat for cockatoos, resulting in habitat loss for at least 31,000 cockatoos and reducing the total island population to around 30,400 individuals (Kinnaird *et al.* 2003, p. 233).

Transmigration

Indonesia has long had a policy to resettle people, mainly from Java, to develop the less populated regions of the country, with the Maluku Province being a major destination (BLI 2008k, p. 8). From 1969–1989, some 730,000 families were relocated in Indonesia (Library of Congress 1992, p. 1). While the scale of transmigration has been reduced over the past decade, the recent unrest in Maluku led to large-scale movement of people. In some areas, these movements of people have had serious negative effects on the environment, involving land disputes with indigenous inhabitants (Library of Congress 1992, p. 1), forest clearance for agriculture, unsustainable slash-and-burn farming (BLI 2008k, p. 8), and introduction of wet rice cultivation (Ellen 1993, p. 200).

Oil Exploration

In 1993, a significant oil discovery was made in eastern Seram—the Non-Bula Block, which occupies an area of about 4,572 km^2 (1,765 mi^2). Development was delayed until 2002 (Lion Energy Limited 2009, p. 2). The average output from the main oil field, the Oseil Field, in the first half of 2006 was 4,300 barrels per day (Entrepreneur 2009, p. 1). The gross oil reserves in that field have been estimated to be about 39 million barrels—7 million barrels of proven reserves, 6 million barrels of probable reserves, and 26 million barrels of possible reserves (International Business Times 2009, p. 1). In 2008, oil was discovered in a new well, which lies 4 km (2.5 mi) from the Oseil Field. The investment firm is currently petitioning the Indonesian government to begin production and export operations from the new field (E&P Magazine 2008, p. 1). Generally, oil development areas cover large tracts of land, but the area occupied by permanent facilities including pipelines and refineries is relatively small. However, oil development can have significant negative impacts on nearby habitat through construction of roads and other buildings, discharge of refineries, and oil spills and leaks (Rhee *et al.* 2004, chap. 6 p. 31).

Infrastructure Development

Seram is remote, with no airport and only rudimentary ground transportation (Morrison 2001, p. 5). An essential part of regional development is the improvement of roads. However, new roads can cause serious environmental problems (BLI 2008k, p. 8), as shown by the Trans-Seram Highway, which threatens forest habitat by illegal logging, land clearance, and soil erosion (Morrison 2001, p. 5). The excavation of sand for local road construction has affected some habitat on Seram. Previous proposals for a large cement factory, with a quarry and hydroelectric dam, close to Manusela National Park appear to have been abandoned (BLI 2008k, p. 8).

Summary of Factor A

The salmon-crested cockatoo resides in lowland forests predominately between 100–600 m (328–1,968 ft) throughout the island, with the highest densities of birds occurring in little-disturbed forests. Logging and illegal logging are primary threats to the habitat of this species, with the threats occurring throughout the island in lowland forests.

Cockatoos are highly impacted by selective logging of primary forests.

Selective logging, which targets mature trees, has a negative impact on hole-nesters, such as the salmon-crested cockatoo. Research found that the abundance of cockatoos was positively related to the density of its favored nest tree and strangling figs, trees that would be impacted by logging, especially since reduced-impact logging techniques are seldom applied.

Research also found that for every 100 km² (38.6 mi²) of Seram's primary forests that were selectively logged in the last 6 years, 700 birds were likely lost from the cockatoo population. Similarly, for every 100 km² of locally disturbed secondary forest that were converted to plantations, 600 birds were likely lost from the cockatoo population. While the estimated densities of cockatoos in logged forests below 300 m (984 ft) were more than half those in unlogged forests, researchers were unable to separate the effects of habitat change from the possible effects of logging on trapping rates (see Factor B).

Once the primary forest is logged, experience on other nearby Indonesian islands shows that the secondary forest is generally converted to other uses or logged again rather than being allowed to return to primary forest. Therefore, although cockatoos may continue to inhabit secondary forests on Seram, the population will be at a substantially lower number. The trend of high loss of primary forests and degradation of secondary forests is of concern because little is known about the reproductive ecology of the salmon-crested cockatoo in the wild, including breeding success in mature forests versus secondary forests, and whether the cockatoo will survive in degraded forests in the long term. Also, the size of groups of cockatoos observed was drastically smaller in research conducted in 1998, where 75 percent of birds were observed as single individuals and 22 percent in pairs, compared to earlier reports, where groups of up to 16 birds were seen.

By 2001, approximately 20 percent of the original forest cover on Seram had been cleared. About 50 percent of the island's forests were held under logging concessions, with more than 75 percent within the salmon-crested cockatoo's favored lowland habitat. Based on information from the Ministry of Forestry in Indonesia, researchers estimated that the cockatoo lost 1,200 km² (463 mi²), or 8.5 percent, of habitat between 1989 and 1999 due to logging. Although we have no information on the current status of logging concessions or actual logging (legal and illegal) activity on Seram since 1999, we anticipate that the rate of loss of cockatoo habitat due to logging will continue at the 1989–1999 level or increase because commercial logging enterprises are now focused on Seram. We have no information that indicates that this trend will be reversed in the foreseeable future.

In addition, approximately 44 percent of Seram's lowland forests (6,220 km² (2,401 mi²)) is designated as conversion forest, of which 45 percent is within logging concessions. It is predicted that by 2028 up to 50 percent of the current population (at least 31,000 cockatoos) may be lost as a result of conversion of forests to agriculture and plantations, which provide no habitat for the cockatoo.

Approximately 11.7 percent of Seram's lowland forests are protected in Manusela National Park and Gunung Sahuwai Nature Reserve. Researchers estimated that these protected areas could provide habitat for up to 7,300 salmon-crested cockatoos. However, about 15 percent of the national park is under logging concessions and illegal logging has been occurring. Once the land is logged, the land use is often changed to agriculture.

The resettlement of people on Seram has had negative effects on the environment and the habitat of the salmon-crested cockatoo. These negative effects include forest clearance for agriculture, unsustainable slash-and-burn farming, and introduction of wet rice cultivation. The relatively recent development of oil production on Seram most likely has adversely affected the cockatoo's habitat. Potential development of such a large part of Seram (the current Non-Bula Block occupies one-quarter of the island) is a concern because at one time the salmon-crested cockatoo appeared to be mostly distributed in the eastern part of the island. Although we do not know what forest habitat has been destroyed, we do know that oil development on Seram will have a negative impact on nearby habitat through road building and other construction, discharge of refineries, and oil spills and leaks. Further, an essential part of regional development is infrastructure development, primarily the improvement of roads, which leads to illegal logging and land clearance, as well as facilitates bird trapping.

In summary, extensive logging and conversion of lowland forests to agriculture and plantations, combined with transmigratory human resettlement, oil exploration, and infrastructure development, are likely to destroy much of the lowland rain forests of Seram, the salmon-crested cockatoo's habitat, by 2025. Therefore, we find that the present and threatened destruction, modification, or curtailment of its habitat is a threat to the continued existence of this species throughout all of its range in the foreseeable future.

Factor B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The salmon-crested cockatoo is a very popular pet bird. In the 1980s, it suffered a rapid population decline due to trapping largely for international trade. Below we analyze the impact of international and domestic trade within and surrounding Indonesia and other uses for recreational, scientific, or educational purposes. We also consider and describe programs on Seram to support the conservation of the cockatoo—the release of confiscated cockatoos and local involvement.

International and Domestic Commercial Trade

International wildlife trade is a profitable business and has been identified as contributing to the decline of a number of bird species, including the salmon-crested cockatoo (BLI 2008h, p. 1). The majority of wild-caught birds in international trade are sold as pets (Thomsen *et al.* 1992, p. 5). In addition, in Indonesia, pet birds, particularly parrots, are an important part of the culture, creating a massive demand for parrots internationally and domestically (BLI 2008k, p. 10). In a survey of bird-keeping among households in five major Indonesian cities, Jepson and Ladle (2005, pp. 442–448) found that as many as 2.5 million birds are kept in the five cities. Of these, 60,230 wild-caught native parrots were kept by 51,000 households, and 50,590 wild-caught native parrots were acquired each year (this annual figure represents a change in ownership and not the number of individuals taken from the wild). The researchers concluded that the level of bird-keeping among urban Indonesians calls for a conservation intervention.

Parrots have been traded for hundreds of years by people living in the Moluccas. Heinroth (1902, p. 120) reported that at the start of the 20th century, trade significantly impacted the salmon-crested cockatoo. Bowler (1988, p. 6) wrote that the salmon-crested cockatoo was severely threatened by extensive trapping for the pet bird trade in the late 1970s, with the government apparently having little control over the number of birds taken from the wild. In the 1980s, extensive trapping of the salmon-crested cockatoo was the most important factor in the species' decline (BLI 2008k, p. 10; Forshaw 1989, p. 141). Smiet reported that trade in live birds flourished on Seram. The salmon-crested cockatoo was a popular pet

traded in large numbers, accounting for 15 percent of the export (Smiet 1985, pp. 181, 189). Smiet (1982, pp. 324–325) also found live cockatoos readily available in the Ambon market.

Based on the most recent CITES annual report data, 74,838 salmon-crested cockatoos were reported as exported from Indonesia between 1981 and 1990 (only 26 of these were reported as bodies, all others were reported as live birds), with international imports (from all exporting countries) averaging 8,393 annually (UNEP–WCMC 2009b, p. 3; 2009a, p. 1). The species was listed in CITES Appendix II in 1981, but the high volume of trade led the CITES Significant Trade Working Group to identify this species as one of particular concern (CITES 1989b, p. 121). A review of CITES annual report trade data available at the time showed that the level of international trade of live birds was having a detrimental effect on wild populations (Inskipp *et al.* 1988, pp. 185–186, 188). The trade data showed imports of live salmon-crested cockatoos continued to be high in 1986 and 1987, with the 1987 Indonesian harvest quota being exceeded by 3,661 birds (CITES 1989a, p. 5) or 72 percent. The Indonesian government decreased the annual harvest quota from 10,250 in 1984 to 1,000 in 1989, but a CITES document suggested that these national measures to control trade had been ineffective (CITES 1989b, p. 121). Thus, the CITES Parties voted to transfer the salmon-crested cockatoo to CITES Appendix I, effective January 18, 1990. In 1990, field work on Seram revealed a "sharp decline in visible trade" in the salmon-crested cockatoo, although small numbers of birds were still leaving the island (Taylor 1990, p. 14).

Although CITES annual reports are of great value in assessing levels of legal trade and trends of trade, the number of cockatoos traded may be higher than the data reflect. The numbers do not include data from countries that are not CITES Parties or CITES Parties that did not submit annual reports (Inskipp *et al.* 1988, p. viii); although, in many cases the Parties that these countries traded with did submit records. Also, the numbers do not include deaths of birds before export, birds illegally traded, and birds domestically traded, factors that can potentially double the numbers, according to Cameron (2007, p. 163). ProFauna Indonesia, an animal protection nongovernmental organization, estimated that parrot smuggling in North Maluku, Indonesia, results in approximately 40 percent mortality (5 percent during glue trapping, 10 percent during transportation, and 25 percent during holding to sell in bird markets (due to malnutrition, disease, and stress)) (ProFauna Indonesia 2008, p. 5). Undocumented illegal trade (international and domestic) is difficult to quantify (Pain *et al.* 2006, p. 322; Thomsen *et al.* 1992, p. 3), and a listing in Appendix I of CITES does not totally stop illegal trade (Pain *et al.* 2006, p. 328). Seizures reported to the CITES Secretariat since 1990, however, are small—1 live bird seized in Austria in 1997; 25 live birds seized in the United Arab Emirates in 1998; and 4 live birds seized in Indonesia in 1999 (John Sellar 2009, pers. comm., p. 2). However, it should be noted that CITES Parties are not required to identify seizures in their annual reports, so actual seizure figures may be higher. Since 1999, the U.S. Fish and Wildlife Service, Office of Law Enforcement, has seized only two salmon-crested cockatoos for lack of proper permits (FWS 2009, p. 1).

While CITES reported a clear fall in trade after 1989, with an average annual worldwide import of 159 cockatoos (UNEP–WCMC 2009c, p. 5), illegal hunting and trade of salmon-crested cockatoos continues today, with high domestic consumption in Indonesia, despite this species also being protected under Indonesian laws (Republic of Indonesia Law No. 5, 1990, and Law No. 7, 1999), which include imprisonment and fines for violations (see *Conservation Measures* above). Extrapolating from figures obtained during interviews with parrot trappers in 1998, an estimated 4,000 salmon-crested cockatoos are trapped each year on Seram (BLI 2008k, p. 10; Cameron 2007, p. 164), which is approximately 6.4 percent of the population (Kinnaird *et al., in litt.,* as cited in BLI 2001, p. 1666). Direct evidence of continuing illegal trade is the sighting of glue traps (Kinnaird 2000, p. 15). Poachers use glue traps by cutting a suitable perching branch out of a tree and replacing that branch with one that has been smeared with sticky glue. Then a tame decoy bird lures wild birds into the glue trap (ProFauna Indonesia 2008, p. 2). Birds are also captured using nylon fishing-line snares or by tracing adults to their nesting sites so that the young can be taken (ProFauna Indonesia 2004, p. 5; Juniper and Parr 1998, p. 218; Bowler 1988, p. 6). Metz (2005, p. 35) described local declines in the salmon-crested cockatoo, based on statements from trappers. When cockatoos became scarce on the western part of the island in 1991–92, poachers moved to the eastern and northern parts of the island.

Even with government controls, the commercial hunting of cockatoos (*i.e.,* hunting by people to gain at least a temporary living from the activity) is relatively common on Seram (Ellen 1993, p. 199). Field research conducted in 2003–2005 in a small village (320 people, 60 households) located in the Manusela Valley led to the conclusion that collecting wild parrots, including the salmon-crested cockatoo, is a way for villagers to supplement their income during times of hardship (Sasaoka 2009, pers. comm., p. 1; Sasaoka 2008, p. 158). Most trapping was sporadic and the number of parrots caught was low. Traps are set in fruit trees such as durian (*Durio* spp.) and breadfruit (*Artocarpus heterophyllus*) from January to May, and traps are set in resting sites at any time of the year. In 2003, 21 salmon-crested cockatoos were trapped in the research site by 3 households; in 2004, 25 cockatoos by 5 households; and in 2005, 26 cockatoos by 10 households. Villagers sometimes kept the cockatoos for several months while waiting for the best price, but normally did not keep them as pets. Trappers received 70,000–100,000 IDR (7–10 USD) for an adult cockatoo and 200,000–250,000 IDR (20–25 USD) for a baby cockatoo, selling the birds to middlemen in coastal areas (Sasaoka 2009, pers. comm., pp. 1–2). In studying the forest peoples of Seram, social anthropologists have reported that parrot catching accounts for 25 to 30 percent of forest people's cash income, and that young men among the Halafara people of the Manusela Valley catch and sell parrots to raise their bride price (Badcock *in litt.* 1997 as cited in Snyder *et al.* 2000, p. 60).

The scope of the illegal trade in the salmon-crested cockatoo is unknown. After conducting an investigation from December 2003 to May 2004, ProFauna Indonesia reported that smuggling and trade in protected birds continues despite legislation that prohibits such activities. According to the report, at least 9,600 parrots, including salmon-crested cockatoos (numbers of birds by species not given in this article), are caught on Seram and sold to bird exporters in Jakarta via Ambon each year (ProFauna Indonesia 2006, p. 1; 2004, p. 6). The illegal practice involved Ambon's largest bird trader and Seram's most prominent bird collector and trader (Jakarta Post 2004, p. 2). A principal broker on Seram might have 20–50 salmon-crested cockatoos at any one time (Metz and Nursahid 2004, p. 8), even though legal trapping quotas are zero. A single trapper can capture up to 16 cockatoos each month within Manusela National Park (ProFauna Indonesia 2004, p. 4). However, finding

and trapping birds have become harder, and the price paid to trappers has increased (Metz 2008, pp. 2–3).

Cockatoos are taken to the coast, sold, and transported to Ambon on boats in packed cages (Juniper and Parr 1998, p. 281) in hidden compartments surrounded by legally shipped lories and lorikeets (Metz and Nursahid 2004, p. 9; Profauna Indonesia 2004, p. 7) or by hiding birds in thermos bottles (Metz 2005, pp. 35–36; Metz and Nursahid 2004, p. 9; ProFauna Indonesia 2004, p. 9) or sections of bamboo (Cameron 2007, p. 164). Salmon-crested cockatoos may also be reported on shipping permits as white cockatoos (*Cacatua alba*), an unprotected species in Indonesia (ProFauna Indonesia 2004, p. 6). Some birds are flown to Jakarta and may receive a police escort to the market (Metz and Nursahid 2004, p. 9). Illegally exported cockatoos are reported from Indonesian markets in Medan and Sumatra or international markets in Singapore and Bangkok (Kinnaird 2000, p. 15), or they may pass through Singapore, China, Taiwan, and Malaysia, with Thailand a recent major importer (Metz n.d., p. 1). Cockatoos also may be smuggled directly out of Indonesia and sent by boat to the Philippines and Singapore, which act as distribution points for worldwide illegal trade (Cameron 2007, p. 164).

Most Indonesian towns have either a bird market or a stall selling birds within the main market (Shepherd *et al.* 2004, p. 2). Birds in Indonesian markets are most likely sold for domestic use, although some birds will go into international trade (Cameron 2007, p. 163). Metz (2007b, p. 2) estimated that 80 percent of illegally traded salmon-crested cockatoos remain in Indonesia. Some cockatoos remain as pets where they are trapped, but most are sold to homes in the cities in western Indonesia, where the salmon-crested cockatoo is a symbol of wealth and prestige (Metz n.d., p. 1). This cockatoo is still sold openly in the markets of Ambon and elsewhere in Indonesia. Cameron (2007, p. 163) noted that in 1998, Margaret Kinnaird and co-workers saw up to 40 salmon-crested cockatoos at any time in Ambon markets. In an analysis of the pet trade in Medan, Sumatra, between 1997 and 2001, Shepherd *et al.* (2004, p. 12) concluded that the salmon-crested cockatoo was common in trade in Medan, with 71 cockatoos being recorded in the markets. Most of the birds at the Medan market were sold as live pets (Shepherd *et al.* 2004, p. 24). In 2003, ProFauna Indonesia (2004, p. 8) found 50 salmon-crested cockatoos had been traded among three markets in Java known to sell hundreds of protected parrots: Bratang bird market in Surabaya, Pramuka bird market in Jakarta, and Pasar Turi in Surabaya. However, ProFauna Indonesia speculated that the real number must be higher than 50 because the number of parrots shipped from Seram to Jakarta within a month is at least 20 and estimated that a minimum of 240 salmon-crested cockatoos are illegally shipped to Jakarta in a year (ProFauna Indonesia 2004, pp. 10–11). In addition to being sold at markets in Jakarta, salmon-crested cockatoos are also sold to the people of Maluku, including soldiers of the National Indonesian Army returning to Java; shipments using military ships are difficult to control (ProFauna Indonesia 2004, p. 9).

Stopping illegal trade is complicated by the vast size of Indonesia's coastline and government officials with limited resources and knowledge to deal with the illegal pet trade and corruption (Metz 2007c, p. 2). ProFauna Indonesia claimed that illegal traders exploited the religious conflict between Muslims and Christians in the Maluku Islands in May of 2004, flooding the markets in Jakarta with salmon-crested cockatoos. Animal activist and Chairman of the Balikpapan Orangutan Survival Foundation, Willie Smith, suggested that it would be difficult to stop the illegal trade in cockatoos because much of the smuggling was backed or carried out by the Indonesian military and because the departments responsible for protecting natural resources were hampered by conflicts of interest and a lack of willingness to take action (Jakarta Post 2004, pp. 3, 4). Until recently, the wildlife protection laws have not been vigorously enforced, but this may be changing. For example, in September 2004, National Park Officers arrested a long-term bird buyer and confiscated nine salmon-crested cockatoos. The buyer was sentenced to two months' jail time and given a fine (Metz n.d., p. 1).

To combat the illegal wildlife trade, Southeast Asian countries, including Indonesia, formed the Association of South East Asian Nations–Wildlife Enforcement Network (ASEAN–WEN) in 2005 to protect the region's biodiversity (Gulf Times 2008, p. 1). ASEAN uses a cooperative approach to law enforcement (Cameron 2007, p. 164). It focuses on the gathering and sharing of intelligence, capacity building, and better cooperation in anti-smuggling and Customs controls across Southeast Asia (Lin 2005, p. 192). For example, in 2008, Indonesian police officers and forestry and Customs officers participated in an intensive Wildlife Crime Investigation Course to help the government tackle poaching and smuggling (Wildlife Alliance 2008, p. 2).

Assessing the effects of trade on wild populations of parrots, such as the salmon-crested cockatoo, is difficult because the threats of habitat loss and trade operate in concert (Snyder *et al.* 2000, pp. 2, 68). For example, the loss of habitat due to logging, conversion of forests to agriculture and plantations, increased human settlement, oil exploration, and infrastructure development leads to more exposure to bird trapping. Thus, it is difficult to distinguish between the effects of habitat loss and trade on the cockatoo. In addition, little information is available on the number and age of birds being taken from the wild and when and where the birds are being trapped. For example, the trapping of large numbers of breeding-age adults from a population is apt to have a larger overall adverse impact than the removal of a similar number of juveniles (Thomsen *et al.* 1992, p. 10). Coates and Bishop (1997, pp. 39–41) reported that trapping the salmon-crested cockatoo for international and domestic Indonesian markets, in combination with ongoing destruction of lowland forests, was having a major negative impact on wild populations. They concluded that, despite the protection given to the cockatoo by Manusela National Park, this cockatoo was being trapped to extinction.

Recreational, Scientific, or Educational Purposes

While conducting research in one village in central Seram, Dr. Sasaoka (pers. comm. 2009, p. 2) wrote that hunting with air guns for food started in 2000. Although the use of air guns was not common in his research site, about 10 villagers were using air guns to hunt Columbidae species (pigeons and doves). If a hunter encountered a salmon-crested cockatoo in the forest or garden by chance, the hunter would shoot it for food. Based on Dr. Sasaoka's unpublished field data, about 40 salmon-crested cockatoos were shot and killed by air gun hunting in 2003. This information raises questions on the use of air guns on Seram. Without additional data, however, we are unable to assess the possible impact air gun hunting may be having or will have on the survival of salmon-crested cockatoos. We are not aware of any overutilization of the salmon-crested cockatoo for recreational, scientific, or educational purposes that is a threat to the species now or in the foreseeable future.

Release of Confiscated Cockatoos

In recent years, small numbers of confiscated salmon-crested cockatoos have been rehabilitated and released into the wild. In 2005, the Kembali Bebas Avian Center for the rescue and rehabilitation of Indonesian parrots was established on Northern Seram (IPP (Indonesian Parrot Project) 2008c, p. 1; Price 2008, p. 2). In March 2006, three illegally trapped salmon-crested cockatoos, which had been confiscated from local trappers by forestry officials in 2004, were released on Seram. The birds were tested for diseases, observed for wild behaviors, fitted with a leg band, and tagged with a microchip to allow for long-term monitoring (IPP 2008a, p. 2). In January 2008, six more salmon-crested cockatoos were released, and in February 2008, seven more were released. The project provides the government a means of dealing with confiscated parrots. It also gives local villagers pride in their native birds and teaches them the principles of conservation (ireport 2008, pp. 2–3). Although the Center uses the IUCN and CITES guidelines when releasing birds due to the risk of introducing diseases into wild populations (Metz 2007c, p. 7), some parrot experts find the release of confiscated birds generally the least favorable conservation option and should be avoided because of the risk of introducing diseases into wild populations (Snyder *et al.* 2000, pp. 22–24). However, we found no information indicating this action as a threat to the salmon-crested cockatoos.

Local Involvement

Indonesia is a culturally diverse country and the values and perceptions of many Indonesians may differ from those of western conservationists. Many rural villagers are unaware that birds have restricted distributions and do not understand the concept of extinction. Thus, they may think that, when a population declines, the birds moved into the hills or are getting smarter and, therefore, harder to catch (Snyder *et al.* 2000, pp. 60–61). In addition, using and trading natural resources is a basic part of Indonesian culture and economy (Snyder *et al.* 2000, pp. 60–61). As a result, one of the most important components of successful conservation programs is local education that promotes optimism, cooperation, and collaboration and helps people discover and understand the underlying causes of environmental problems (Snyder *et al.* 2000, pp. 14–15).

Others also have recognized the need for a strong awareness campaign concerning the legal and conservation status of the salmon-crested cockatoo (BLI 2001, p. 1668; Metz 1998, p. 11). The IPP is a nonprofit organization dedicated to the conservation of wild Indonesian parrots, with goals to teach the principles and value of conservation, replace trapping of parrots with sustainable economic alternatives, work with the Indonesian authorities to rehabilitate and release confiscated parrots back into the wild, conduct scientific research, and provide information (Metz 2007c, p. 6). IPP started a Conservation-Awareness-Pride (CAP) program to reach adults and children in the villages where the birds are trapped and in the cities where the birds are most often shipped for sale (Metz 2007a, p. 1). The program is using the salmon-crested cockatoo as a flagship species for conservation to familiarize the people, especially the children, of Maluku Province with the image of its unique endemic parrots (IPP 2008b, p. 1). In 2007, IPP reported that almost 4,500 students have participated in the CAP program, which was showing progress (Metz 2007a, p. 1–2). A new nongovernmental organization was formed to help carry out this work (IPP 2008b, p. 2).

Other anti-poaching programs of the IPP include providing sustainable income for local villagers to reduce trapping and smuggling (IPP 2008c, p. 2). Former parrot poachers earn a living by providing the day-to-day care of rescued parrots at the Kembali Bebas Avian Center for the rescue and rehabilitation of Indonesian parrots. Villagers also are employed to collect and process the nuts of the kenari tree (*Canarium* spp.), which are part of the diet of larger cockatoos. The nuts are sold to parrot owners outside of Indonesia and all proceeds are used to pay workers (Metz 2007c, p. 13).

Ecotourism can provide economic benefits to local communities and lead them to value and protect species and ecosystems (Snyder *et al.* 2000, p. 16). The development of tourism is one of the priorities of Maluku Province. In 1981, Smiet and Siallagan (1981, p. 18) wrote that the scenic beauty and colorful wildlife of Seram would be great tourist attractions. The Proposed Manusela National Park Management Plan 1982–1987 suggested that tourist accommodations be developed in the Manusela Valley of the park (Smiet and Siallagan 1981, p. 32). However, Edwards (1993, p. 11) suggested that the irregular and difficult means of transportation and lack of infrastructure and facilities for tourists are unlikely to encourage large numbers of visitors. Despite these difficulties, in 2001, Project Bird Watch led its first eco-tour of Seram (St. Joan 2005, p. 24), followed by additional tours (IPP 2009, p. 1). These tours provide ex-trappers and other villagers income by acting as bird guides, porters, and cooks. The local people see that their birds can attract people from others parts of the world, providing money and hopefully instilling pride in Indonesian birds (Metz 2007c, p. 12). Other ecotourism has developed on a small scale. In 2008, a few Internet sites advertised or reported on bird watching tours to Seram (Bird Tour Asia 2008, pp. 1–3; Eco-Adventure in Indonesia 2008, p. 1; King Bird Tours 2007, pp. 1–6).

Summary of Factor B

Keeping pet birds, especially parrots, plays an important role in Indonesian culture, creating a massive demand for parrots internationally and domestically. By the 1980s, uncontrolled trapping of salmon-crested cockatoos for the pet bird trade was adversely impacting the species. Based on CITES records, 74,838 specimens of salmon-crested cockatoos were exported from Indonesia between 1981 and 1990, with international imports (from all exporting countries) averaging 8,393 annually. Because trade was having a detrimental effect on wild populations, the CITES countries voted to transfer the species from CITES Appendix II to CITES Appendix I, effective January 18, 1990.

An Appendix-I listing generally precludes commercial trade in wild-caught birds, but it is difficult to quantify undocumented illegal international and domestic trade. Illegal trapping and trade in wild-caught salmon-crested cockatoos continues today, with high domestic consumption in Indonesia. Hunting of parrots by people to supplement their income is relatively common on Seram. Interviews in villages suggested that perhaps as many as 4,000 salmon-crested cockatoos (approximately 6.4 percent of the population) are captured annually, with an estimated 80 percent sold within Indonesia and 20 percent put in international trade. The salmon-crested cockatoo is still sold openly in the markets of Ambon and elsewhere in Indonesia. Generally, little is known about how the domestic trade in birds in Indonesia is affecting wild populations. Little information is available on the number and age of birds being taken from the wild and when and where the birds are being trapped. In addition, it is difficult to assess the effects of trade on wild populations because the impacts from trade operate in combinations with the loss of the species' habitat.

Illegal trade is difficult to control because Indonesia has a vast coastline; government officials have limited resources and knowledge to deal with the illegal pet trade, have conflicts of interest, and lack a willingness to take action; and there is widespread corruption. Indonesia is a member of ASEAN–WEN and has made an effort to train some of their police, forestry, and Customs officers in methods to tackle poaching and smuggling. However, outside of a recent sting operation involving the salmon-crested cockatoo, the wildlife protection laws have not been vigorously enforced for this species.

Recent information that hunters from one small village in central Seram used air guns to kill 40 salmon-crested cockatoos for food in one year is of concern. Without additional information, however, we are unable to assess the possible impact air gun hunting may be having or will have on the survival of the salmon-crested cockatoo.

In recent years, several programs—rehabilitation and release of confiscated parrots, public awareness program, economic incentive program, and ecotourism—were established on Seram to support the conservation of the salmon-crested cockatoo. It is too soon to assess if these programs have been successful in gaining local support and reducing poaching. At this time, poaching of the salmon-crested cockatoo for the commercial pet trade and use of wild-caught salmon-crested cockatoos as pets in Indonesia continues.

In summary, although the recent use of air guns to hunt salmon-crested cockatoos for food is of concern, based on the best available information, we find that overutilization of the cockatoo for recreational, scientific, or education purposes is not a threat to the continued existence of this species. However, we find that uncontrolled, illegal domestic and international trade of salmon-crested cockatoos as pets is a threat to the continued existence of this species.

Factor C. Disease or Predation

Diseases—General

One of the most serious diseases found in cockatoo species is beak and feather disease. All cockatoo species are likely susceptible to this disease. The disease affects wild and captive birds, with chronic infections resulting in feather loss and deformities of beak and feathers. Birds usually become infected in the nest by ingesting or inhaling virus particles. Birds either develop immunity, die within a couple of weeks, or become chronically infected. No vaccine exists to immunize populations (Cameron 2007, p. 82). In Indonesia's Kembali Bebas Rescue and Rehabilitation Center on Seram, 50 cockatoos have been screened for beak and feather disease. None of the birds was found to be positive for the virus, but a number had positive antibodies to the virus (Metz 2007b, p. 3).

Another serious disease that has been reported to infect cockatoos is proventricular dilatation disease (PDD). It is a fatal disease that poses a serious threat to domesticated and wild parrots worldwide, particularly those with very small populations (Kistler *et al.* 2008, p. 1; Waugh 1996, p. 112). This contagious disease causes damage to the nerves of the upper digestive tract, so that food digestion and absorption are negatively affected. The disease has a 100 percent mortality rate. In 2008, researchers discovered a genetically diverse set of novel avian bornaviruses that are thought to be the causative agents, and developed diagnostic tests, methods of treating or preventing bornavirus infection, and methods for screening for the anti-bornaviral compounds (University of California at San Francisco 2008, p. 1). We are unaware of any reports that this disease occurs in salmon-crested cockatoos in the wild.

Disease—Avian Influenza

Wild birds, especially waterfowl and shorebirds, are natural reservoirs of avian influenza. Most viral strains have low pathogenicity and cause few clinical signs in infected birds. However, strains can mutate into highly pathogenic forms, which is what happened in 1997 when highly pathogenic avian influenza H5N1 first appeared in Hong Kong (USDA *et al.* 2006, pp. 1–2). The H5N1 virus is mainly propagated by commercial poultry living in close quarters with humans. The role of migratory birds is less clear (Metz 2006a, p. 24). Scientists increasingly believe that at least some migratory waterfowl carry the H5N1 virus, sometimes over long distances, and introduce the virus to poultry flocks (WHO 2006, p. 2). The H5N1 virus has infected and caused death in domestic poultry, people, and some wild birds in Asia, Europe, and Africa. About half of the people infected die from the disease (FWS 2006, p. 1). As of September 10, 2008, Indonesia confirmed its 136th human case (WHO 2008, p. 26). As of December 2006, avian influenza was not present in fowl in the Maluku Province (Metz 2006b, p. 42).

There has been only one documented case of avian influenza H5N1 in parrots—a parrot held in quarantine in the United Kingdom was diagnosed with the disease. However, from 2004–2006 (Metz 2006a, pp. 24–25), fears of the avian influenza H5N1's risk to human health resulted in the culling of wild and pet birds in Asia and Europe, including the salmon-crested cockatoo. In the Philippines, 339 smuggled parrots were euthanized following confiscation. In Taiwan, 28 palm and salmon-crested cockatoos were euthanized at the airport out of fear that they might harbor the disease. In Indonesia, agriculture officials announced that all birds, including pet birds, within a given radius of chickens infected with avian influenza would be culled. However, when avian influenza struck Ragunan Zoo in Jakarta, parrots and cockatoos were not euthanized unless testing showed they had the disease (IPP 2006, p. 1).

Predation

Man probably introduced rats, mice, pigs (*Sus celebensis*), deer (*Cervus timorensis*), civet (*Paradoxurus hermaphroditus*), and oriental civet (*Viverra tangalunga*) to Seram (Smiet and Siallagan 1981, p. 8). Goats, horses, cows, and water buffalo (*Bubalus bubalis*) also have been introduced. Although the deer as grazers have some adverse effect on low forest brush (Ellen 1993, pp. 193, 201), we are unaware of an adverse effect from these mammals to the salmon-crested cockatoo's habitat. The cockatoo has natural predators, such as snakes and monitor lizards that raid the nest for eggs and chicks (Metz *et al.* 2007, p. 37).

Summary of Factor C

Disease and predation associated with salmon-crested cockatoos in the wild are not well documented. Although some serious diseases—such as beak and feather disease and PDD—occur in cockatoos in the wild, we found no information that these diseases occur in salmon-crested cockatoos in the wild. Cases of avian influenza H5N1 are continuing to occur in Indonesia; however, parrots generally are not considered to be natural reservoirs of this disease. While there is the potential for captive-held salmon-crested cockatoos to be euthanized, especially smuggled ones that have been seized at ports, the number of birds euthanized is small and not a threat to the species.

A number of introduced mammals occur on Seram, but we are unaware of any predation on the salmon-crested cockatoo from these introduced mammals. The salmon-crested cockatoo has natural predators, but we were unable to find information that these natural predators are having any significant negative impact on the

productivity of this species. Thus, we find that neither disease nor predation is a threat to the salmon-crested cockatoo in any portion of its range now or in the foreseeable future.

Factor D. The Inadequacy of Existing Regulatory Mechanisms

As described below, Indonesia has laws and regulations in place to conserve biodiversity, manage forest, regulate trade, provide species protection, and develop and manage protected areas.

Biodiversity

The Indonesian Government has passed legislation to control activities that have an adverse impact on the environment and to conserve biodiversity. In 1991, it drafted the Biodiversity Action Plan (BAP), which became a comprehensive framework for biodiversity conservation, advocating a wide range of policy and institutional reforms to slow the rate of biodiversity loss. In 1997, the government produced Agenda 21-Indonesia, a National Strategy for Sustainable Development. These two documents recognize a complex mix of problems, including increasing population, poor implementation of regulations, conversion of forests to agricultural lands, transmigration projects, disregard of land tenure, breakdown of traditional community management, unsustainable logging, and poaching.

The main objectives of the BAP are to slow the loss of primary forests and other habitats, expand data on Indonesia's biodiversity, and foster sustainable use of biological resources. Agenda 21-Indonesia broadly develops the BAP. For example, in situ conservation would include establishing an integrated protected area system, gaining local support for protected areas, developing sustainable means of funding for protected areas, and supporting donor activities to maximize conservation efforts (Murdoch University 2000, pp. 1–2).

The U.S. Agency for International Development (USAID) assessed the status of biodiversity in Indonesia under the Foreign Assistance Act (22 U.S.C. 2151 *et seq.*) and concluded that threats to biodiversity had worsened since 1998 and decentralization had led to increased exploitation of biodiversity (Rhee *et al.* 2004, p. xvii). Most managers at the district level are generally unaware or uncaring of biodiversity issues (Jepson *et al.* 2001, pp. 859–860).

Forest Management

The Indonesian government has laws and regulations in place to support sustainable forest management. The primary law is the Basic Forestry Law (Law No. 41). It provides for the management of forest conservation, protection, and production; defines main forest functions; and deals with forest management, planning, research, development, education, training, and enforcement (FAOLEX 2008b, p. 1; Rhee *et al.* 2004, chap. 2 p. 3; Law No. 41 1999, pp. 11–14). Presidential Instruction No. 4/2005 describes the duties of the different responsible government entities and addresses the eradication of illegal logging by taking action against anyone who harvests or collects timber forest without a license; receives, buys, or sells timber collected illegally; or carries, controls, or has timber without a certificate of legitimacy (FAOLEX 2009, p. 1; Indonesia 2005, pp. 1–3).

Agenda 21-Indonesia identifies the major shortcomings in the management of production forests to include current concession policies and logging practices (Murdoch University 2000, p. 1). A major threat to Indonesia's forest resources is conflict: (1) Among local communities and between local communities and concessions over management and extraction rights; and (2) between different levels of government over licensing and regulation of timber extraction and forest conversion (Rhee *et al.* 2004, chap. 6 p. 9). Land tenure and access in forests are contentious issues. The Indonesian government has jurisdiction over all resources, but has often ignored the land use or ownership claims of local peoples (Rhee *et al.* 2004, chap. 2 pp. 21–22).

In addition, the laws and regulations are frequently ignored, in part because of widespread corruption (BLI 2008k, p. 7). The Indonesian economic crisis that led to the downfall of the Suharto regime resulted in the government instituting a rapid and far-reaching decentralization that gave local government greater autonomy (Down to Earth 2000, p. 1). Decentralization resulted in confusion of roles and responsibilities, and implementation of decentralization has been slow and uncertain because of conflicting interpretation of policies and priorities and the lack of capacity or experience of local governments to manage (Rhee *et al.* 2004, chap. 2 p. 20).

USAID also assessed the status of forests in Indonesia under the Foreign Assistance Act and concluded that threats to forests had worsened since 1998 and decentralization had led to worse forestry practices and increased conflict over land tenure (Rhee *et al.* 2004, p. xvii). The responsibility for the management of forests was placed at the district level within provinces, but criteria and standards were still set by the central government. Most districts do not have the capacity for planning for sustainable development and have limited capacity to govern. Today, Indonesia is torn apart by economic and political crises, and the gap between sustainable forest management and the reality of current mismanagement is wide (Jepson *et al.* 2001, pp. 859–860).

In 2008, the Indonesian Government reported to the Commission on Crime Prevention and Criminal Justice on its strategic plan on forestry, outlining its priorities of fighting illegal logging, controlling forest fires, restructuring the forestry sector, rehabilitating and conserving forest resources, and decentralizing forest management. The Government said it was committed to intensifying the fight against illegal logging by implementing a forest crime case tracking system, prosecuting forest crimes, and enhancing collaboration by sharing information on forest crime and illegal timber shipments (Commission on Crime Prevention and Criminal Justice 2008, p. 4).

International Wildlife Trade

Indonesia has been a member of CITES since December 28, 1978. It has designated Management, Scientific, and Enforcement authorities to implement the treaty (CITES 2008b, p. 1) and has played an active role in CITES meetings.

The salmon-crested cockatoo is listed in Appendix I of CITES. CITES, an international treaty with 175 member nations, including Indonesia and the United States, entered into force in 1975. In the United States, CITES is implemented through the U.S. Endangered Species Act of 1973, as amended (Act). The Secretary of the Interior has delegated the Department's responsibility for CITES to the Director of the Service and established the CITES Scientific and Management Authorities to implement the treaty. Under this treaty, member countries work together to ensure that international trade in animal and plant species is not detrimental to the survival of wild populations by regulating the import, export, and reexport of CITES-listed animal and plant species (USFWS 2010, unpaginated). Although CITES reports indicate a drastic fall in international trade of salmon-crested cockatoos after the species was transferred to Appendix I in January 1999, illegal hunting and trade of this species continue today,

with high domestic consumption within Indonesia, as discussed above under Factor B.

Species Protection and Management Plans

The salmon-crested cockatoo is on the Indonesian Government's list of protected species (Rhee *et al.* 2004, chap. 5 pp. 2, App. VIII) and is protected by Indonesian Law 5/1990, Conservation of Biodiversity and Ecosystems (see *Conservation Status* above), which establishes the basic principles and general rules for the management, conservation, and use of biological resources, natural habitats, and protected areas. Protected species may not be captured, collected, displaced, killed, destroyed, transported, or traded except for the purposes of research, science, and safeguarding the plants or animals. People that violate the law are subject to fines and punishment (Law No. 5 1990, pp. 1–44; FAOLEX 2008a, p. 1).

While laws to protect species are in place, enforcement often is severely lacking (Shepherd *et al.* 2004, p. 4) or difficult, given the thousands of islands that make up Indonesia (Nichols *et al.* 1991, p. 1) and considering that illegal activities remain socially acceptable at the local level. Thus, the law is generally disregarded and only sporadically enforced (Kinnaird 2000, p. 14). Few enforcement officers are trained in species identification, and the enforcement agency lacks capacity and incentive. Illegal trade has been reported to the Natural Resource Conservation Agency, which is responsible for enforcing the law, but that agency is "powerless" when confronted with the situation (ProFauna Indonesia 2004, p. 8). To further complicate enforcement, some bird dealers claim that members of the Department of Forest Protection and Nature Conservation are involved in the trade (Shepherd *et al.* 2004, p. 4) (see Factor B above for a discussion of the problems relating to stopping illegal trade in salmon-crested cockatoos).

As discussed under Factor B, protection under Indonesian law has not stopped trapping and trade of salmon-crested cockatoos. There is some evidence that the actions of Indonesian government agencies and the military are changing; however, if penalties are not enforced for illegal trade, trapping from the wild will continue (ProFauna Indonesia 2004, pp. 9–11).

In 1982, Indonesia used the best principles of conservation biology to plan a national protected area system, with the development of a national conservation plan (NCP) (Jepson *et al.* 2002, p. 40). Large areas were proposed as conservation areas. Subsequently, forests were also allocated for production, watershed protection, or conservation, and Indonesia endorsed the principles of sustainable forest management. However, these principles were never fully reconciled with national policy and practice (Jepson *et al.* 2001, p. 859). As a result, reserves generally have not been added to the proposed network of the NCP, and existing reserves have not been managed effectively (Whitten *et al.* 2001, p. 1). Agenda 21-Indonesia identifies problems faced in managing protected areas, including the "lack of public participation, lack of management framework, the need for regional income, insufficient funding and lack of law enforcement" (Murdoch University 2000, pp. 1–2).

In reviewing the efficacy of the protected area system of East Kalimantan Province, Indonesia, Jepson *et al.* (2002, pp. 31, 39–40) found that key reserves either had not been established or were degraded (*i.e.,* moderate and widespread habitat modification or populations of key fauna significantly reduced). They concluded that turning reserve planning into practice had failed because of local-level sociopolitical realities. The ability of the Indonesian government to manage and protect reserves or to establish reserves that were proposed in the NCP in East Kalimantan, and in Indonesia as a whole, had been severely constrained by problems, including insufficient funding, workforce shortages, weak penalties, a general lack of support for conservation in society, corruption, and the aggressive use of resources by migrants.

We are unaware of any review of the efficacy of protected areas in Seram, but find that the general conclusion of the East Kalimantan study applies. Wai Bula, an area in the northeastern part of Seram (Kinnaird *et al.* 2003. p. 230), illustrates the inability of the Indonesian government to implement the NCP. Wai Bula, proposed as a nature reserve in 1981, was never officially designated and has a low probability of future protection (Kinnaird *et al.* 2003, p. 231). It has been identified as an IBA (see *Important Bird Areas* above) with primary lowland and lower montane forests and a current population of cockatoos (BLI 2008f, p. 1). It was proposed as a nature reserve, but 93 percent is also under logging concessions (Kinnaird *et al.* 2003, p. 231). Resolution of these conflicting land use designations would have a considerable impact on the amount of protected habitat available for the salmon-crested cockatoo (Kinnaird *et al.* 2003, p. 231).

Habitat Protection

The unique wildlife and plants of Seram are somewhat protected by Manusela National Park, an area of 2,323.2 km^2 (896.8 mi^2) in the center of the country, and Gunung Sahuwai Nature Reserve, an area of 122.8 km^2 (47.4 mi^2) on the western peninsula. Under Act No. 5 of 1990, the use of biological resources and their ecosystems in protected areas is to be sustainable, and plants and animals are to be managed with consideration of their long-term survival and maintenance of their diversity. Research, education, improvement of the species, and recreational activities are permitted, but other activities are prohibited (FAOLEX 2008a, pp. 1–2).

Although 14 percent of the forests on Seram are in protected areas, 15 percent of Manusela National Park is under logging concessions and 4.6 percent has been converted to other land uses. A road has been built through the park, which increases the risk of logging and human encroachment. Five villages of indigenous people, who mainly work as dry land farmers and hunt and collect forest products (including parrots), exist in the park. In 1980, 999 people lived within the park boundaries, and 19,102 people lived within 10 km (6 mi) of its boundaries. We are unaware of logging concessions in Gunung Sahuai Nature Reserve, and it has experienced less (3.1 percent) land conversion and human encroachment (Kinnaird *et al.* 2003, pp. 230–231).

The regulations and management of the protected areas are ineffective at reducing the threats of habitat destruction (see Factor A above) and poaching for the pet trade (see Factor B above). Reserve management is at the national level—the responsibility of the Directorate General of Forest Protection and Nature Conservation. Effective reserve management is hampered by a shortage of staff, expertise, and money, and the remoteness of protected areas. The recent civil unrest forced a reduction in conservation programs, with some protected areas virtually unsupervised (BLI 2008k, p. 9).

Summary of Factor D

While Indonesia has a good legal framework to manage wildlife and their habitats, implementation of its laws and regulatory mechanisms has been inadequate to reduce the threats to the salmon-crested cockatoo. As discussed under Factor A above, we found that logging and conversion of forests to agriculture and plantations are primary

threats to the habitat of the salmon-crested cockatoo. Laws and regulations are frequently ignored, and illegal logging is considered a leading cause of forest degradation in Indonesia. The decentralization of government has led to unsustainable forestry practices, increased exploitation of resources, and increased conflict over land tenure. Current concession policies and logging practices hamper sustainable forestry. Because nearly 50 percent of Seram's forests are held under logging concessions, with more than 75 percent within the salmon-crested cockatoo's favored lowland habitat, the proper management of these logging concessions could determine the survival of this species.

The salmon-crested cockatoo is listed in Appendix I of CITES (see discussion under *Conservation Status* above), which requires CITES Parties to ensure controlled legal international trade. However, as discussed under Factor B above, uncontrolled illegal domestic and international trade continues to adversely impact the salmon-crested cockatoo. The species is on Indonesia's list of protected species, and the law provides prohibitions, including capture and trade, and lays out fines and punishment. However, the law is generally ignored and only sporadically enforced.

Manusela National Park and Gunung Sahuwai Nature Reserve provide some protection to the salmon-crested cockatoo. Management of these protected areas, however, is hampered by staff shortages, lack of expertise and money, and remoteness of the areas. Another Important Bird Area, Wai Bula, was proposed as a nature reserve in 1981, but was never officially designated. Resolution of its designation would increase the amount of protected habitat available for the salmon-crested cockatoo, but the delay in making such a designation reflects the inability of the Indonesian government to implement the national conservation plan.

In summary, we find that the existing regulatory mechanisms, as implemented, are inadequate to reduce or remove the current threats to the salmon-crested cockatoo. There is no information available to suggest these regulatory mechanisms will change in the foreseeable future.

Factor E. Other Natural or Manmade Factors Affecting the Continued Existence of the Species

Forest Fires

Fires in tropical forests are becoming increasingly common (Cochrane 2003, p. 913; Kinnaird and O'Brien 1998, p. 954; Uhl & Kauffman 1990, p. 437; Woods 1989, p. 290). For example, in 1983, disastrous, large-scale El Niño wildfires occurred in the tropical forests of Borneo, although severe droughts had occurred previously without causing extensive fires. Woods (1989, p. 290) concluded that the extensive fires were the result of forests becoming more fire-prone due to logging, road building, and cultivation. He also found that potential recovery of forest structure is not good in logged forests, especially if further burning occurs. The 1997–98 El Niño fires in Indonesia devastated vast tracts of forest, especially on the islands of Sumatra and Kalimantan (islands to the far west of Seram) and Irian Jaya (a neighboring island to the east of Seram) (Kinnaird and O'Brien 1998, p. 954). The forest fires were mainly caused by poor logging practices, burning of agriculture land, and land clearing for plantations (Grimmett and Sumarauw 2000, pp. 6, 8; Kinnaird and O'Brien 1998, p. 954).

Forest fires are often part of El Niño events, which are expected to increase in number and severity due to global climate change. Using a global climate model that had successfully predicted the 1997–98 El Niño, Timmermann *et al.* (1999, pp. 694–696) looked at the effect of future greenhouse warming on El Niño frequency. They concluded that, if emissions of greenhouse gases continue to increase, events typical of El Niño will become more frequent and variations may become more extreme. Because more tropical forests are becoming disturbed and because the number of El Niño events is predicted to increase and be more severe, serious fires in Indonesia, including Seram and other areas of the tropics, are likely to remain a critical conservation concern (Adeney *et al.* 2006, p. 292).

Fires can lead to the long-term decline of the rain forest, with destruction of leaf litter and the seedling-sapling layer, increased invasion of exotic plants, increased tree mortality, and changes in the soil. Although many animals have the ability to escape direct mortality from fire, they also may be negatively affected by loss of food, shelter, and territory. For example, the number of frugivorous and omnivorous birds declined after the 1997–98 El Nino fire in Indonesia, with helmeted and rhinoceros hornbills (*Buceros rhinoceros* and *B. vigil*) declining by 50 percent in one study area (Kinnaird and O'Brien 1998, p. 955).

At the current time, high impact fires are not adversely affecting the habitat of the salmon-crested cockatoo. In 1985, Ellen (1985, p. 567) wrote that fires seldom get out of hand on Seram when land is cleared for agriculture. In addition, the 1997–98 El Niño fires in Indonesia are said to have not affected Seram (Metz 1998, p. 11). However, because devastating El Niño fires have been shown to occur more frequently in logged or disturbed forests and Seram has extensive logging planned and ongoing clearing of land for plantations and agriculture, El Niño-related fires will likely have a severe impact on Seram in the future (Kinnaird *et al.* 2003, p. 234).

Civil Unrest

Unlike the rest of Indonesia, which is 90 percent Muslim, the Moluccas have equal numbers of Christian and Islamic followers. Under the Suharto government, primarily Muslim transmigrants moved to Seram, and the government assigned officials, police, and military from outside the region. Rioting between Muslim and Christian citizens became an ongoing problem on Seram. In 1999 and 2001, as Indonesia plunged into a deep economic crisis, resentments erupted and thousands of people were killed (Javaman 2009, p. 1). It is unknown if the civil unrest affected the salmon-crested cockatoo, but the violence temporarily stopped development. On the other hand, many birds were sold to soldiers; thus a heavy military presence led to a rise in cockatoo trade (ProFauna Indonesia 2004, p. 9; Kinnaird 2000, p. 15).

Persecution

In 1864, Wallace (1864, p. 279) reported that the salmon-crested cockatoo was considered a harmful pest in coconut palms around villages on Seram. The cockatoos gnawed through shells of young coconuts to reach the pulp and water inside.

Historically, the cockatoo was persecuted (BLI 2004, p. 2; Metz 1998, p. 10), but BLI (2008b, p. 2) reports this persecution is in the past and unlikely to be a threat in the future.

Summary of Factor E

Forest fires negatively impact birds through direct mortality or the loss of food, shelter, and territory. Research has shown that frugivorous and omnivorous birds may decline by 50 percent as a result of fires in areas of disturbed tropical rain forests. Forest fires are becoming more common in tropical rain forests, and occurring more frequently in logged or disturbed areas. As discussed under Factor A above, logging and conversion of land to agriculture and plantations is ongoing and will likely increase in the future on Seram. Approximately 75 percent (8,271 km^2 (3,193 mi^2)) of the lowland habitat

favored by the salmon-crested cockatoo is under logging concession. Approximately 44 percent (6,220 km² (2,401 mi²)) of Seram's lowland forest is slated for conversion and, by 2028, most of this land will be converted to agriculture or plantations. Therefore, we find that, even though fires are not currently adversely affecting the salmon-crested cockatoo, fires will be a threat to this species throughout all of its range in the foreseeable future due to the extensive planned logging and clearing of land for agriculture and plantations and predicted increase in number and severity of El Niño events due to global climate change.

Civil unrest is an ongoing problem on Seram, but we are unaware that it has adversely impacted the salmon-crested cockatoo other than a possible increase in sporadic illegal trade, which is discussed under Factor B above. The persecution of salmon-crested cockatoo as pests in coconut palm groves does not appear to be a problem today. Thus, we find that neither civil unrest nor persecution is a threat to the salmon-crested cockatoo in any portion of its range now or in the foreseeable future.

Status Determination for the Salmon-Crested Cockatoo

We have carefully assessed the best available scientific and commercial information regarding the past, present, and potential future threats faced by the salmon-crested cockatoo. The species is likely to become in danger of extinction within the foreseeable future throughout all of its range primarily due to extensive logging and conversion of lowland forests to agricultural lands and plantations (Factor A) and uncontrolled, illegal trapping for the domestic and international pet trade within Indonesia (Factor B). Also, existing regulatory mechanisms, as implemented, are inadequate to mitigate the current threats to the salmon-crested cockatoo (Factor D). Although El Niño forest fires are not currently adversely affecting the salmon-crested cockatoo, fires will be a threat in the foreseeable future due to the extensive planned logging and clearing of land and predicted increase in number and severity of El Niño events due to global climate change (Factor E).

The salmon-crested cockatoo is endemic to the island of Seram, with records from three small adjacent islands. Current populations are estimated at 62,400 individuals, with a decreasing population trend. The cockatoo is largely a resident of lowland rain forests, predominately between 100–600 m (328–1,968 ft), with the highest densities of birds occurring in little-disturbed forests. It requires large, mature trees for nesting.

Logging and conversion of forests to agriculture and plantations are primary threats to the habitat of the salmon-crested cockatoo in the foreseeable future. By 2001, about 20 percent of the original forest cover had been cleared. Nearly 50 percent of the island's forests are held under logging concessions, of which 75 percent are held within lowland forests, prime salmon-crested cockatoo habitat. Unsustainable logging practices destroy the forest canopy and dramatically reduce habitat available for cockatoos, especially if large nest trees and strangling figs are harvested. Between 1980 and 1990, an estimated 1,200 km² (463 mi²) of the salmon-crested cockatoo's habitat was lost. In addition, about 44 percent of lowland forest is designated as conversion forest. Researchers predict that by 2028, up to 50 percent of the current salmon-crested cockatoo population (at least 31,000 cockatoos) may be lost as a result of conversion of forests to agriculture and plantations. Although about 14 percent of the forests are within protected areas, logging concessions are held in 15 percent of these areas, and small-scale illegal logging and human encroachment also occur there. By 2028, extensive logging and conversion of lowland forests to agriculture and plantations, combined with transmigratory human resettlement, oil exploration, and infrastructure development, are likely to destroy much of the salmon-crested cockatoo's habitat.

Illegal trapping of the salmon-crested cockatoo for the pet trade is widespread. Pet birds are an important part of Indonesian culture, with large numbers of wild-caught parrots traded domestically and internationally. In the late 1970s, the salmon-crested cockatoo was extensively trapped for the pet bird trade. By the 1980s, the pet bird trade was adversely impacting the species. Between 1981 and 1990, 74,838 specimens of salmon-crested cockatoos were exported from Indonesia, and international imports (from all exporting countries) averaged 8,393 annually. Although the salmon-crested cockatoo was transferred to Appendix I of CITES, trappers reportedly remain active, and wild-caught birds are openly sold in domestic markets within Indonesia. Interviews in villages suggest that perhaps as many as 4,000 birds, or 6.4 percent of the current estimated population, are still being captured annually, with 80 percent of these 4,000 birds illegally traded domestically and 20 percent illegally exported from Indonesia. Ending illegal trade is hampered by Indonesia's large coastline, officials with limited resources and knowledge, and corruption. The continuing illegal trade of the salmon-crested cockatoo is a threat to the survival of the species in the foreseeable future.

Indonesia has a good legal framework to manage wildlife and their habitats, but implementation of its laws and regulatory mechanisms has been inadequate to address the threats to the salmon-crested cockatoo. Logging laws and policies are frequently ignored and rarely enforced, and illegal logging is rampant, even occurring in national parks and nature reserves. Current concession policies and logging practices hamper sustainable forestry. The salmon-crested cockatoo is a protected species in Indonesia, and the law prohibits capture and trade and also provides for fines and punishment. Again, the law is generally ignored and only sporadically enforced. Illegal bird trade is socially acceptable, making it difficult to enforce laws. Public awareness programs, economic incentive programs, and ecotourism are in their infancy, and it is too early to tell if they are helping to control poaching on the island. The illegal trade of the salmon-crested cockatoo for the domestic trade, and to a smaller extent international trade, continues to occur.

Fires are becoming more common in tropical rain forests where logging, road building, and clearing of land for agriculture occur. Fires can lead to the long-term decline of the rain forest, and many animals may be negatively affected by loss of food, shelter, and territory. Currently, high impact fires are not adversely affecting the habitat of the salmon-crested cockatoo, but due to future planned extensive logging and clearing of land for agriculture and plantations and a predicted increase in the number and severity of El Niño events, fires will be a threat to this species in the foreseeable future.

Section 3 of the Act defines an "endangered species" as "any species which is in danger of extinction throughout all or a significant portion of its range" and a "threatened species" as "any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range." The salmon-crested cockatoo population estimate is approximately 62,400, and the threats of habitat loss and trade are not at a level to consider the species to be in danger of extinction at this time. However, based on the analysis of the five factors discussed above, we determine that the salmon-crested cockatoo is likely to become an endangered species within the

foreseeable future throughout all of its range.

Significant Portion of the Range Analysis

Having determined that the salmon-crested cockatoo meets the definition of threatened under the Act, we considered whether there is a significant portion of the range of the species that meets the definition of endangered. The Act defines an endangered species as one "in danger of extinction throughout all or a significant portion of its range," and a threatened species as one "likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range." For purposes of this finding, a significant portion of a species' range is an area that is important to the conservation of the species because it contributes meaningfully to the representation, resiliency, or redundancy of the species. The contribution must be at a level such that its loss would result in a decrease in the ability to conserve the species.

The salmon-crested cockatoo is endemic to Seram and the three small, neighboring Indonesian islands of Ambon, Haruku, and Saparua. Very limited information is available on the status of the species on Ambon, Haruku, and Saparua. Whether this species is native or introduced to Ambon is uncertain, and a very small number of cockatoos (sightings of six to eight birds) are thought to occur in remaining natural forests in the more remote regions of the island. The status of the salmon-crested cockatoo is unknown on Haruku and Saparua. For Haruku, there is one unspecified locality and observation reported in 1934; for Saparua, there is one specimen recorded for 1923. Even less information is available on the habitat and the threats to the species on these islands. The relatively larger population size in high-quality habitat on Seram suggests that this area may be a significant portion of the range. The salmon-crested cockatoo primarily occurs in lowland forests throughout the island of Seram; its current population is estimated to be approximately 62,400 birds; and the species persists in high densities in primary and disturbed primary forests on Seram. After a review of the best scientific and commercial data, we determined that there is no significant portion of the range in which the salmon-crested cockatoo is currently in danger of extinction.

Determination

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to this species. Under our five-factor analysis above, we determined that the species is threatened by logging and conversion of forests to agriculture and plantations, illegal trapping for the pet trade, inadequacy of regulatory mechanisms, and fires resulting from El Niño events throughout its entire range. The species is threatened by each of these factors uniformly throughout Seram. There is no significant portion of the range in which the salmon-crested cockatoo is currently in danger of extinction. There is no information to suggest that the species is currently in danger of extinction because of the reasonably large population size of the species on the island and its occurrence throughout the lowland forests of Seram in primary and disturbed primary forest habitat, as well as secondary forest habitat. Although we do not believe that the species is currently endangered, we believe it is likely that the salmon-crested cockatoo will become endangered throughout its range in the foreseeable future. Thus, we list the salmon-crested cockatoo as a threatened species throughout all of its range under the Act.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness, and encourages and results in conservation actions by Federal and State governments, private agencies and groups, and individuals.

Section 7(a) of the Act, as amended, and as implemented by regulations at 50 CFR part 402, requires Federal agencies to evaluate their actions within the United States or on the high seas with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. However, given that the salmon-crested cockatoo is not native to the United States, we are not designating critical habitat for this species under section 4 of the Act.

Section 8(a) of the Act authorizes the provision of limited financial assistance for the development and management of programs that the Secretary of the Interior determines to be necessary or useful for the conservation of endangered and threatened species in foreign countries. Sections 8(b) and 8(c) of the Act authorize the Secretary to encourage conservation programs for foreign endangered species and to provide assistance for such programs in the form of personnel and the training of personnel.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered and threatened wildlife. These prohibitions, at 50 CFR 17.21 and 17.31, in part, make it illegal for any person subject to the jurisdiction of the United States to "take" (take includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or to attempt any of these) within the United States or upon the high seas; import or export; deliver, receive, carry, transport, or ship in interstate or foreign commerce in the course of commercial activity; or sell or offer for sale in interstate or foreign commerce any endangered wildlife species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken in violation of the Act. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered and threatened wildlife species under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 for endangered species and 17.32 for threatened species. For endangered wildlife, a permit may be issued for scientific purposes, to enhance the propagation or survival of the species, and for incidental take in connection with otherwise lawful activities. For threatened species, a permit may be issued for the same activities, as well as zoological exhibition, education, and special purposes consistent with the Act.

Special Rule

Section 4(d) of the Act states that the Secretary of the Interior (Secretary) may, by regulation, extend to threatened species prohibitions provided for endangered species under section 9. Our implementing regulations for threatened wildlife (50 CFR 17.31) incorporate the section 9 prohibitions for endangered wildlife, except when a special rule is promulgated. For threatened species, section 4(d) of the Act gives the Secretary discretion to specify the prohibitions and any exceptions to those prohibitions that are appropriate for the species, provided that those prohibitions and exceptions are necessary and advisable to provide for the conservation of the species. A special rule allows us to include provisions that are tailored to the specific conservation needs of the threatened species and which may be more or less restrictive than the general provisions at 50 CFR 17.31.

Under the special rule, all prohibitions and provisions of 50 CFR 17.31 and 17.32 apply to the salmon-crested cockatoo, except that import and export of certain salmon-crested cockatoos into and from the United States and interstate commerce are allowed without a permit under the Act, as explained below.

Import and Export

We assessed the conservation needs of the salmon-crested cockatoo in light of the broad protections provided to the species under CITES and the WBCA. The salmon-crested cockatoo is listed as Appendix I under CITES, a treaty which contributes to the conservation of this species by ensuring that trade in specimens of the species is not detrimental to its survival and is not for commercial purposes (see *Conservation Status*). The purpose of the WBCA is to promote the conservation of exotic birds and to ensure that imports of exotic birds into the United States does not harm them (see *Conservation Status*).

International trade of the salmon-crested cockatoo has been drastically reduced since the listing of the species in Appendix I of CITES and the protection of the species under the WBCA. A review of the CITES data shows that in the 19 years between 1991 and 2009, 334 live salmon-crested cockatoos were imported into the United States. Many of these birds are personal pets that owners took with them when traveling from and returning to the United States. None of these birds were imported from Indonesia. The best available commercial data indicate that the current threat to the salmon-crested cockatoo stems from illegal trade in the domestic and international markets of Indonesia and surrounding countries. Thus, the general prohibitions on import and export contained in 50 CFR 17.31, which only extend within the jurisdiction of the United States, would not regulate such activities. Thus, we find that the prohibitions and authorizations contained within this special rule provide all the necessary and advisable conservation measures that are needed for this species.

The special rule applies to all commercial and noncommercial international shipments of live salmon-crested cockatoos and parts and products, including the import and export of personal pets and research samples. In most instances, the special rule adopts the existing conservation regulatory requirements of CITES and the WBCA as the appropriate regulatory provisions for the import and export of certain captive salmon-crested cockatoos. The import and export of birds into and from the United States, taken from the wild on or after January 18, 1990; conducting an activity that could take or incidentally take salmon-crested cockatoos; and foreign commerce will need to meet the requirements of 50 CFR 17.31 and 17.32, including obtaining a permit under the Act. However, the special rule allows a person to import or export either: (1) A specimen held in captivity prior to January 18, 1990 (the date the species was transferred to CITES Appendix I), even if taken from the wild prior to that date; or (2) a captive-bred specimen, without a permit issued under the Act, provided the export is authorized under CITES and the import is authorized under CITES and the WBCA. If the specimen was taken from the wild and held in captivity prior to January 18, 1990, the importer or exporter will need to provide documentation to support that status, such as a copy of the original CITES permit indicating when the bird was removed from the wild or museum specimen reports. For captive-bred birds, the importer would need to provide either a valid CITES export/re-export document issued by a foreign Management Authority that indicates that the specimen was captive-bred by using a source code on the face of the permit of either "C", "D" or "F". For exporters of captive-bred birds, a signed and dated statement from the breeder of the bird, along with documentation on the source of their breeding stock, would document the captive-bred status of U.S. birds.

The special rule applies to birds captive-bred in the United States and abroad. The terms "captive-bred" and "captivity" used in this special rule are defined in the regulations at 50 CFR 17.3 and refer to wildlife produced in a controlled environment that is intensively manipulated by man, from parents that mated or otherwise transferred gametes in captivity. Although the special rule requires a permit under the Act to "take" (harm and harass) a salmon-crested cockatoo, "take" does not include generally accepted animal husbandry practices, breeding procedures, or provisions of veterinary care for confining, tranquilizing, or anesthetizing, when such practices, procedures, or provisions are not likely to result in injury to the wildlife when applied in captive wildlife.

Interstate Commerce

Although we do not have current data, we believe there are a large number of salmon-crested cockatoos in the United States. Current ISIS (International Species Information System) information shows 123 salmon-crested cockatoos are held in U.S. zoos (ISIS 2008, p. 4). This number is an underestimate as some zoos do not enter data into the ISIS database. In addition, CITES annual report data shows that 58,484 live salmon-crested cockatoos were imported into the United States between 1981 and 1989, before the species was added to CITES Appendix I (UNEP–WCMC 2009b, p. 2). We believe that a number of these birds are still held in captivity in the United States. In 1990 and 1991, surveys of captive breeding by U.S. aviculturists showed 820 and 625 salmon-crested cockatoos were held by 239 and 194 survey respondents, respectively (Allen and Johnson 1991, p. 17; Johnson 1992, p. 46). We have no information to suggest that interstate commerce activities are associated with threats to the salmon-crested cockatoo in the wild or will negatively affect any efforts aimed at the recovery of wild populations of the species. Furthermore, allowing interstate commerce of birds captive-bred and reared in the United States will preclude the U.S. demand for salmon-crested cockatoos obtained from international markets, which would otherwise contribute to the illegal capture and trade of wild birds. Therefore, because interstate commerce within the United States has not been found to threaten the salmon-crested cockatoo, the species is otherwise protected in the course of interstate commercial activities under the incidental take provisions contained in 50 CFR 17.31, and international trade of this species for primarily commercial purposes is prohibited under CITES, we find this special rule contains all the prohibitions and authorizations necessary and advisable for the conservation of the salmon-crested cockatoo.

Under the special rule, a person may deliver, receive, carry, transport, ship, sell, offer to sell, purchase, or offer to purchase a salmon-crested cockatoo in interstate commerce without a permit under the Act. At the same time, the prohibitions on take under 50 CFR 17.31 would apply under this special rule and any interstate commerce activities that could incidentally take cockatoos would require a permit under 50 CFR 17.32.

Required Determinations

National Environmental Policy Act (NEPA)

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act of

1969 (42 U.S.C. 4321 *et seq.*), need not be prepared in connection with regulations adopted under section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited in this final rule is available on the Internet at *http://www.regulations.gov* or upon request from the Endangered Species Program, U.S. Fish and Wildlife Service (see the **FOR FURTHER INFORMATION CONTACT** section).

Authors

The primary authors of this final rule are the staff members of the Branch of Foreign Species, Endangered Species Program, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Arlington, VA 22203.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. Amend § 17.11(h) by adding new entry for "Cockatoo, salmon-crested" in alphabetical order under BIRDS to the List of Endangered and Threatened Wildlife, as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
BIRDS							
*	*	*	*	*	*		*
Cockatoo, salmon-crested.	*Cacatua moluccensis.*	Seram, Haruku, Saparua, and Ambon, Indonesia.	Entire	T	779	NA	17.41(c)
*	*	*	*	*	*		*

■ 3. Amend § 17.41 by adding paragraph (c) to read as follows:

§ 17.41 Special rules—birds.

* * * * *

(c) Salmon-crested cockatoo (*Cacatua moluccensis*). (1) Except as noted in paragraphs (c)(2) and (c)(3) of this section, all prohibitions and provisions of §§ 17.31 and 17.32 of this part apply to the salmon-crested cockatoo.

(2) *Import and export.* You may import or export a specimen without a permit issued under section 17.32 of this part only when the provisions of parts 13, 14, 15, and 23 of this chapter have been met and you meet the following requirements:

(i) *Captive-bred specimens:* The source code on the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) document accompanying the specimen must be "F" (captive-bred), "C" (bred in captivity), or "D" (bred in captivity for commercial purposes)(see 50 CFR 23.24); or

(ii) *Specimens held in captivity prior to January 18, 1990:* You must provide documentation to demonstrate that the specimen was held in captivity prior to January 18, 1990. Such documentation may include copies of receipts, accession or veterinary records, CITES documents, or wildlife declaration forms, which must be dated prior to January 18, 1990.

(3) *Interstate commerce.* Except where use after import is restricted under § 23.55 of this chapter, you may deliver, receive, carry, transport, ship, sell, offer to sell, purchase, or offer to purchase in interstate commerce a live salmon-crested cockatoo.

Dated: May 9, 2011.

Gregory Siekaniec,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2011–12928 Filed 5–25–11; 8:45 am]

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Part III

Environmental Protection Agency

40 CFR Part 2
Confidentiality Determinations for Data Required Under the Mandatory Greenhouse Gas Reporting Rule and Amendments to Special Rules Governing Certain Information Obtained Under the Clean Air Act; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 2

[EPA–HQ–OAR–2009–0924; FRL–9311–2]

RIN 2060–AQ04

Confidentiality Determinations for Data Required Under the Mandatory Greenhouse Gas Reporting Rule and Amendments to Special Rules Governing Certain Information Obtained Under the Clean Air Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action finalizes the confidentiality determinations for certain data elements required to be reported under the Mandatory Greenhouse Gas Reporting Rule. This action also finalizes amendments to the special rules governing certain information obtained under the Clean Air Act, which authorizes EPA to release or withhold as confidential reported data under the Mandatory Greenhouse Gas Reporting Rule according to the final determinations for such data without taking further procedural steps. This action does not include final confidentiality determinations for data elements that are in the "Inputs to Emission Equations" category.

DATES: This action is effective on July 25, 2011.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2009–0924. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.*, confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other materials, such as copyrighted materials, are not placed on the Internet and are publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Air Docket, EPA/DC, EPA West Building, Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20004. This Docket Facility 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 Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Carole Cook, Climate Change Division, Office of Atmospheric Programs (MC–6207J), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 343–9263; fax number: (202) 343–2342. For technical information and implementation materials, please go to the Web site *http://www.epa.gov/climatechange/emissions/ghgrulemaking.html.* To submit a question, select Rule Help Center, then select Contact Us.

Regulated Entities. The confidentiality determinations and amendment to 40 CFR 2.301 affect entities that must submit annual greenhouse gas (GHG) reports under 40 CFR part 98. The Administrator determined that this action is subject to the provisions of Clean Air Act (CAA) section 307(d). See CAA section 307(d)(1)(v) (the provisions of CAA section 307(d) apply to "such other actions as the Administrator may determine"). Part 98 and this action affects fuel and chemical suppliers and direct emitters of greenhouse gases. Affected categories and entities include those listed in Table 1 of this preamble:

TABLE 1. EXAMPLES OF AFFECTED ENTITIES BY CATEGORY

Category	NAICS	Examples of affected facilities
General Stationary Fuel Combustion Sources	.....	Facilities operating boilers, process heaters, incinerators, turbines, and internal combustion engines.
	321	Manufacturers of lumber and wood products.
	322	Pulp and paper mills.
	325	Chemical manufacturers.
	324	Petroleum refineries and manufacturers of coal products.
	316, 326, 339	Manufacturers of rubber and miscellaneous plastic products.
	331	Steel works and blast furnaces.
	32	Electroplating, plating, polishing, anodizing, and coloring.
	336	Manufacturers of motor vehicle parts and accessories.
	221	Electric, gas, and sanitary services.
	622	Health services.
	611	Educational services.
	325193	Ethyl alcohol manufacturing facilities.
	311611	Meat processing facilities.
	311411	Frozen fruit, juice, and vegetable manufacturing facilities.
	311421	Fruit and vegetable canning facilities.
Electricity Generation	221112	Fossil-fuel fired electric generating units, including units owned by Federal and municipal governments and units located in Indian Country.
Adipic Acid Production	325199	Adipic acid manufacturing facilities.
Aluminum Production	331312	Primary Aluminum production facilities.
Ammonia Manufacturing	325311	Anhydrous and aqueous ammonia manufacturing facilities.
Cement Production	327310	Portland Cement manufacturing plants.
Ferroalloy Production	331112	Ferroalloys manufacturing facilities.
Glass Production	327211	Flat glass manufacturing facilities.
	327213	Glass container manufacturing facilities.
	327212	Other pressed and blown glass and glassware manufacturing facilities.
HCFC–22 Production and HFC–23 Destruction.	325120	Chlorodifluoromethane manufacturing facilities.
Hydrogen Production	325120	Hydrogen manufacturing facilities.
Iron and Steel Production	331111	Integrated iron and steel mills, steel companies, sinter plants, blast furnaces, basic oxygen process furnace shops.
Lead Production	331419	Primary lead smelting and refining facilities.
	331492	Secondary lead smelting and refining facilities.

TABLE 1. EXAMPLES OF AFFECTED ENTITIES BY CATEGORY—Continued

Category	NAICS	Examples of affected facilities
Lime Production	327410	Calcium oxide, calcium hydroxide, and dolomitic hydrates manufacturing facilities.
Magnesium Production	331419	Primary refiners of nonferrous metals by electrolytic methods.
	331492	Secondary magnesium processing plants.
Municipal Solid Waste Landfills	562212	Solid waste landfills.
	221320	Sewage treatment facilities.
Nitric Acid Production	325311	Nitric acid manufacturing facilities.
Petrochemical Production	32511	Ethylene dichloride manufacturing facilities.
	325199	Acrylonitrile, ethylene oxide, and methanol manufacturing facilities.
	325110	Ethylene manufacturing facilities.
	325182	Carbon black manufacturing facilities.
Petroleum Refineries	324110	Petroleum refineries.
Phosphoric Acid Production	325312	Phosphoric acid manufacturing facilities.
Pulp and Paper Manufacturing	322110	Pulp mills.
	322121	Paper mills.
	322130	Paperboard mills.
Silicon Carbide Production	327910	Silicon carbide abrasives manufacturing facilities.
Soda Ash Manufacturing	325181	Alkalies and chlorine manufacturing facilities.
	212391	Soda ash, natural, mining, and/or beneficiation.
Titanium Dioxide Production	325188	Titanium dioxide manufacturing facilities.
Underground Coal Mines	212113	Underground anthracite coal mining operations.
	212112	Underground bituminous coal mining operations.
Zinc Production	331419	Primary zinc refining facilities.
	331492	Zinc dust reclaiming facilities, recovering from scrap and/or alloying purchased metals.
Industrial Waste Landfills	562212	Solid waste landfills.
	221320	Sewage treatment facilities.
	322110	Pulp mills.
	322121	Paper mills.
	322122	Newsprint mills.
	322130	Paperboard mills.
	311611	Meat processing facilities.
	311411	Frozen fruit, juice, and vegetable manufacturing facilities.
	311421	Fruit and vegetable canning facilities.
Industrial Wastewater Treatment	322110	Pulp mills.
	322121	Paper mills.
	322122	Newsprint mills.
	322130	Paperboard mills.
	311611	Meat processing facilities.
	311411	Frozen fruit, juice, and vegetable manufacturing facilities.
	311421	Fruit and vegetable canning facilities.
	325193	Ethanol manufacturing facilities.
Suppliers of Coal Based Liquids Fuels	211111	Coal liquefaction at mine sites.
Suppliers of Petroleum Products	324110	Petroleum refineries.
Suppliers of Natural Gas and NGLs	221210	Natural gas distribution facilities.
	211112	Natural gas liquid extraction facilities.
Suppliers of Industrial GHGs	325120	Industrial gas manufacturing facilities.
Suppliers of Carbon Dioxide (CO_2)	325120	Industrial gas manufacturing facilities.

Table 1 of this preamble lists the types of entities that could be required to report data under Part 98. This list is not intended to be exhaustive, but rather to provide a guide for readers regarding facilities and suppliers likely to be affected by this action. Other types of facilities and suppliers not listed in the table may also be subject to reporting requirements. Many facilities and suppliers are subject to the reporting requirements in multiple subparts of Part 98. To determine whether you are affected by this action, you should carefully examine the applicability criteria found in 40 CFR part 98, subpart A. If you have questions regarding the applicability of this action to a particular facility, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section of this preamble.

Judicial Review. Under section 307(b)(1) of the CAA, judicial review of any of the final confidentiality determinations and rule amendments made in 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 by July 25, 2011. Under CAA section 307(d)(7)(B), 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. This section also provides a mechanism for us 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 this 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 20004, with a copy to the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and a copy to 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. Under CAA section 307(b)(2), the confidentiality determinations and rule amendments established by this action may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce these requirements.

Acronyms and Abbreviations. The following acronyms and abbreviations are used in this document.

BAMM Best Available Monitoring Methods
CAA Clean Air Act
CBI confidential business information
CBP Customs and Border Protection
CEMS continuous emission monitoring system(s)
CFR Code of Federal Regulations
CH_4 methane
CO carbon monoxide
CO_2 carbon dioxide
CO_2e carbon dioxide-equivalent
EIA Energy Information Administration
EPA U.S. Environmental Protection Agency
FR Federal Register
GHG greenhouse gas
GHGRP Greenhouse Gas Reporting Program
HCFC–22 chlorodifluoromethane
HFC–23 trifluoromethane (or CHF_3)
LDC local distribution company
N_2O nitrous oxide
NAICS North American Industry Classification System
NEI National Emissions Inventory
NGO non-governmental organization
OMB Office of Management and Budget
PFCs perfluorocarbons
PSD prevention of significant deterioriation
QA/QC quality assurance/quality control
RFA Regulatory Flexibility Act
SF_6 sulfur Hexafluoride
SBREFA Small Business Regulatory Enforcement Fairness Act
TRI Toxic Release Inventory
USGS United States Geologic Survey
UMRA Unfunded Mandates Reform Act
U.S. United States

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I. Background

A. Background on the Final Rule

On October 30, 2009, EPA published the Mandatory Greenhouse Gas Reporting Rule for collecting information regarding greenhouse gas (GHG) emissions from a broad range of industry sectors (74 FR 56260). Under 40 CFR part 98 of the rule and its subsequent amendments (hereinafter referred to as Part 98), EPA will collect data from certain facilities and suppliers above specified thresholds. The data to be reported includes information on GHG emissions and GHGs supplied, including information necessary to characterize, quantify, and verify the GHG emissions and GHGs supplied data. In the preamble to Part 98, we stated, "Through a notice and comment process, we will establish those data elements that are 'emissions data' and therefore [under CAA section 114(c)] will not be afforded the protections of CBI. As part of that exercise, in response to requests provided in comments, we may identify classes of information that are not emissions data, and are CBI" (74 FR 56287, October 30, 2009).

On July 7, 2010, EPA proposed confidentiality determinations for Part 98 data elements and proposed amending EPA's regulation for handling confidential business information to add specific procedures for the treatment of Part 98 data (75 FR 39094; hereinafter referred to as the "July 7, 2010 CBI proposal"). These proposed amendments to 40 CFR part 2 would allow EPA to release Part 98 data that are determined to be emission data or non-CBI upon finalizing the confidentiality status of these data. The amendments also set forth procedures for treatment of information in Part 98 determined to be CBI. The proposed procedures are similar to or consistent with the existing 40 CFR part 2 procedures.

The July 7, 2010 CBI notice proposed confidentiality determinations for the data elements in the subparts that were included in the 2009 final Part 98 rule (see 74 FR 56260, October 30, 2009), in four subparts that were finalized in July 2010 (see 75 FR 39736, July 12, 2010), and in seven new subparts that had been proposed but not yet finalized as of July 7, 2010 (see 75 FR 18576, 75 FR 18608, and 75 FR 18652, April 12, 2010). The July 7, 2010 CBI proposal also covered proposed changes to the reporting requirements for some of the 2009 final Part 98 subparts. These changes had been proposed in two separate rulemakings (see 75 FR 18455, April, 12, 2010; and 75 FR 33950, June 15, 2010).

On July 20, 2010, EPA issued another proposed rulemaking that changed the description of some reported data elements and required reporting of some new data elements (75 FR 48744; hereinafter referred to as the "July 20, 2010 revisions proposal"). These changes were subsequently finalized on December 17, 2010 (75 FR 79092). Also on July 20, 2010, EPA issued a supplemental CBI proposal that proposed confidentiality determinations for the new and revised data elements that were proposed in the July 20, 2010 revisions notice (75 FR 43889; hereinafter referred to as the "July 20, 2010 supplemental CBI proposal.")

In this action, EPA is finalizing confidentiality determinations for Part 98 data elements with certain exceptions that are discussed in more detail below. The Part 98 data elements covered by this action are described in Section I.C of this preamble. EPA is also finalizing the amendments to EPA's regulation for handling confidential business information.

B. Approach To Making Confidentiality Determinations

In the July 7, 2010 CBI proposal, we described the methodology and rationale used for making confidentiality determinations. This methodology consisted of a two-step process in which we first grouped Part 98 data elements into 22 data categories in all (11 direct emitter data categories and 11 supplier data categories) with each of the 22 data categories containing data elements that are similar in type or characteristics. EPA then proposed confidentiality status based on (1) whether the data qualify as emission data as defined in 40 CFR 2.301(a)(2)(i); and (2) for data that do not qualify as emission data, whether they qualify for confidential treatment under 40 CFR 2.208. In the July 7, 2010 CBI proposal, EPA proposed that only five of the data categories meet the definition of emission data (see Table 2 of the

preamble for the July 7, 2010 CBI proposal for the list of the data categories proposed as emission data).

We proposed that the remaining six direct emitter data categories and 11 supplier data categories did not meet the definition of emission data in 40 CFR 2.301(a)(2)(i). We then evaluated, on a category basis, whether the data elements in these 17 data categories qualify as trade secret or confidential business information under CAA section 114(c) (hereinafter referred to collectively as CBI).[1] In particular, we followed EPA's criteria under 40 CFR 2.208(e)(i) to determine whether data qualifies as CBI, focusing on whether disclosure of the data in each category would be likely to cause "substantial harm to the business's competitive position." We evaluated the data elements by category and proposed confidentiality determinations that applied to all data elements within each category, except for three supplier data categories,[2] where we proposed confidentiality determinations for individual data elements within the category.

Lists of the proposed data categories and EPA's proposed determinations are shown in Table 2 and Table 3 of the preamble to the July 7, 2010 CBI proposal. Further information on EPA's general approach and decision process is presented in Section I.C of the preamble to the July 7, 2010 CBI proposal. Descriptions of the data categories and detailed rationales for the proposed confidentiality determinations for each data category are presented in Section II.C (for direct emitters) and Section II.D (for suppliers) of the preamble for the July 7, 2010 CBI proposal and Section I.C. of the preamble for the July 20, 2010 supplemental CBI proposal.

C. Subparts Covered By This Final Rule

This final rule addresses the confidentiality of data elements reported under the following subparts of 40 CFR part 98, promulgated on October 30, 2009 (74 FR 56260) (as amended in 2010), excluding those data elements in the Inputs to Emission Equation category identified in the "Interim Final Regulation Deferring the Reporting of Certain Data Elements Required Under the Mandatory Reporting of Greenhouse Gases Rule" (75 FR 81338, December 27, 2010).

- Subpart A, General Provisions (as amended by 75 FR 39736, July 12, 2010; 75 FR 66434, October 28, 2010; and 75 FR 79092, December 17, 2010);
- Subpart C, General Stationary Fuel Combustion Sources (as amended by 75 FR 79092, December 17, 2010);
- Subpart D, Electricity Generation (as amended by 75 FR 79092, December 17, 2010);
- Subpart E, Adipic Acid Production (as amended by 75 FR 66434, October 28, 2010);
- Subpart F, Aluminum Production as amended by 75 FR 79092, December 17, 2010);
- Subpart G, Ammonia Manufacturing (as amended by 75 FR 79092, December 17, 2010);
- Subpart H, Cement Production (as amended by 75 FR 66434, October 28, 2010);
- Subpart K, Ferroalloy Production (as amended by 75 FR 66434, October 28, 2010);
- Subpart N, Glass Production (as amended by 75 FR 66434, October 28, 2010);
- Subpart O, HCFC–22 Production and HFC–23 Destruction (as amended by 75 FR 66434, October 28, 2010);
- Subpart P, Hydrogen Production (as amended by 75 FR 66434, October 28, 2010);
- Subpart Q, Iron and Steel Production (as amended by 75 FR 66434, October 28, 2010);
- Subpart R, Lead Production;
- Subpart S, Lime Manufacturing (as amended by 75 FR 66434, October 28, 2010);
- Subpart U, Miscellaneous Uses of Carbonate;
- Subpart V, Nitric Acid Production (as amended by 75 FR 66434, October 28, 2010 and 75 FR 79092, December 17, 2010);
- Subpart X, Petrochemical Production (as amended by 75 FR 79092, December 17, 2010);
- Subpart Y, Petrochemical Production (as amended by 75 FR 79092, December 17, 2010);
- Subpart Z, Phosphoric Acid Production (as amended by 75 FR 66434, October 28, 2010);
- Subpart AA, Pulp and Paper Manufacturing;
- Subpart BB, Silicon Carbide Production;
- Subpart CC, Soda Ash Manufacturing (as amended by 75 FR 66434, October 28, 2010);
- Subpart EE, Titanium Dioxide Production (as amended by 75 FR 66434, October 28, 2010);
- Subpart GG, Zinc Production (as amended by 75 FR 66434, October 28, 2010);
- Subpart HH, Municipal Solid Waste Landfills (as amended by 75 FR 66434, October 28, 2010);
- Subpart LL, Suppliers of Coal-based Liquid Fuels (as amended by 75 FR 79092, December 17, 2010);
- Subpart MM, Suppliers of Petroleum Products (as amended by 75 FR 66434, October 28, 2010);
- Subpart NN, Suppliers of Natural Gas and Natural Gas Liquids (as amended by 75 FR 66434, October 28, 2010);
- Subpart OO, Suppliers of Industrial Greenhouse Gases (as amended by 75 FR 79092, December 17, 2010); and
- Subpart PP, Suppliers of Carbon Dioxide (as amended by 75 FR 79092, December 17, 2010).

In addition, this final rule addresses the confidentiality of data elements reported under the following subparts promulgated on July 12, 2010 (75 FR 39736, July 12, 2010), excluding those data elements in the Inputs to Emission Equations category identified in the proposed "Change to the Reporting Date for Certain Data Elements Required Under the Mandatory Reporting of Greenhouse Gases Rule" (75 FR 81350, December 27, 2010).

- Subpart T, Magnesium Production (75 FR 39736, July 12, 2010);
- Subpart FF, Underground Coal Mines (75 FR 39736, July 12, 2010);
- Subpart II, Wastewater Treatment (75 FR 39736, July 12, 2010); and
- Subpart TT, Industrial Landfills (75 FR 39736, July 12, 2010).

II. Confidentiality Determinations for Data Required by the Mandatory Greenhouse Gas Reporting Rule, Responses to Public Comments, and Final Rule Amendment

A. Final Confidentiality Determinations

In this action, EPA is finalizing the confidentiality determinations for Part 98 data elements reported under the subparts specified in Section I.C. of this preamble. Specifically, EPA is finalizing the category assignments for data elements, the category-specific confidentiality determinations (which apply to all data elements assigned to such categories) and, for categories without category-specific confidentiality determinations, the determinations for the individual data elements within those data categories. The final confidentiality determinations for individual data categories are summarized in Table 2 of this preamble for direct emitters and Table 3 of this preamble for suppliers. As indicated in the tables, EPA made confidentiality determinations by data category for nine of the direct emitter data categories and

[1] EPA has interpreted CAA section 114(c) to afford confidential treatment to both trade secrets and confidential business information. See 40 FR 21987, 21990 (May 20, 1975).

[2] GHGs Reported, Production/Throughput Quantities and Composition, and Unit/Process Operating Characteristics.

eight of the supplier data categories. For the remaining two direct emitter data categories (Unit/Process Static Characteristics that are Not Inputs to Emission Equations and Unit/Process Operating Characteristics that are Not Inputs to Emission Equations) and three supplier data categories (GHGs Reported, Production/Throughput Quantities and Composition, and Unit/Process Operating Characteristics), EPA made confidentiality determinations for each individual data element rather than a single determination for the data category as a whole. Because the confidentiality determinations were made for each individual data element, these categories contain both CBI and non-CBI data elements.

The data category assignments for the Part 98 data elements specified in Section I.C of the preamble and their final confidentiality determinations are provided in the memorandum "Final Data Category Assignments and Confidentiality Determinations for Part 98 Reporting Elements" (see Docket EPA–HQ–OAR–2009–0924 and the Web site, *http://www.epa.gov/climatechange/emissions/ghgrulemaking.html*).

TABLE 2—SUMMARY OF FINAL CONFIDENTIALITY DETERMINATIONS FOR DIRECT EMITTER DATA CATEGORIES

Data category	Confidentiality determination for data elements in each category		
	Emission data[a]	Data that are not emission data and not CBI	Data that are not emission data but are CBI[b]
Facility and Unit Identifier Information	X		
Emissions	X		
Calculation Methodology and Methodological Tier	X		
Data Elements Reported for Periods of Missing Data that are Not Inputs to Emission Equations	X		
Unit/Process Static Characteristics that are Not Inputs to Emission Equations		X[c]	X[c]
Unit/Process Operating Characteristics that are Not Inputs to Emission Equations		X[c]	X[c]
Test and Calibration Methods		X	
Production/Throughput Data that are Not Inputs to Emission Equations			X
Raw Materials Consumed that are Not Inputs to Emission Equations			X
Process-Specific and Vendor Data Submitted in BAMM Extension Requests			X

[a] Under CAA section 114, emission data is not entitled to confidential treatment. See Section I.C of the preamble for the July 7, 2010 CBI proposal (75 FR 39094, July 7, 2010) for further discussion of CAA section 114 requirements. The term emission data is defined at 40 CFR 2.301(a)(2)(i).

[b] Section 114(c)of the CAA affords confidential treatment to data (except emission data) that are considered CBI.

[c] EPA did not make a category-specific confidentiality determination for this category but instead made determination for individual data elements. The data category contains data elements determined to be CBI and data elements determined to be non-CBI.

TABLE 3—SUMMARY OF FINAL CONFIDENTIALITY DETERMINATIONS FOR SUPPLIER DATA CATEGORIES

Data category	Confidentiality determinations for data elements in each category		
	Emission data[a]	Data that are not emission data and not CBI	Data that are not emission data but are CBI[b]
GHGs Reported		X[c]	X[c]
Production/Throughput Quantities and Composition		X[c]	X[c]
Identification Information		X	
Unit/Process Operating Characteristics		X[c]	X[c]
Calculation, Test, and Calibration Methods		X	
Data Elements Reported for Periods of Missing Data that are Not Related to Production/Throughput or Materials Received		X	
Emission Factors			X
Amount and Composition of materials received			X
Data Elements Reported for Periods of Missing Data That are Related to Production/Throughput or Materials Received			X
Supplier Customer and Vendor Information			X
Process-Specific and Vendor Data Submitted in BAMM Extension Requests			X

[a] Under CAA section 114, emission data is not entitled to confidential treatment. See Section I.C of the preamble for the July 7, 2010 CBI proposal (75 FR 39094, July 7, 2010) for further discussion of CAA section 114 requirements. The term emission data is defined at 40 CFR 2.301(a)(2)(i).

[b] Section 114(c) of the CAA affords confidential treatment to data (except emission data) that are considered CBI.

[c] EPA did not make a category-specific confidentiality determination for this category but instead made determination for individual data elements. The data category contains data elements determined to be CBI and data elements determined to be non-CBI.

1. Major Changes to the Scope and Determinations for Particular Data Categories

This section provides a summary of major changes to the scope of this action as well as changes to the determinations for particular data categories. For a discussion of changes to the confidentiality determinations for particular data elements, see Section II.B of this preamble for direct emitters and Section II.C of this preamble for suppliers.

- Although we proposed determinations for the data elements in the following subparts, we have decided not to make final determinations for the data elements in these subparts in this action for the reasons specified in Section II.A.3 of this preamble:

— Subpart I, Electronics Manufacturing;
— Subpart L, Fluorinated Gas Production;
— Subpart W, Petroleum and Natural Gas Systems;
— Subpart DD, Sulfur Hexafluoride (SF_6) and Perfluorocarbons (PFCs) from Electrical Equipment at an Electric Power System;
— Subpart QQ, Importers and Exporters of Fluorinated Greenhouse Gases Contained in Pre-Charged Equipment or Closed-Cell Foams;
— Subpart RR, Geologic Sequestration of Carbon Dioxide;
— Subpart SS, Sulfur Hexafluoride and PFCs from Electrical Equipment Manufacture or Refurbishment; and
— Subpart UU, Injection of Carbon Dioxide.

- We are finalizing CBI determinations for 24 data elements that were added to Part 98 in response to comment on the three proposed revisions notices. The proposed revisions were addressed in the July 2010 CBI proposals. The 24 data elements are the same types of data as those data elements that were included in the CBI proposals and therefore are given the same confidentiality determinations in this final action. For a more detailed explanation, please see Section II.A.3 of this preamble.
- Although we proposed a determination for the direct emitter data category Inputs to Emission Equations, we have decided not to make a final determination for this data category in this action for the reasons specified in Section II.A.4 of this preamble.
- Although we proposed category-wide determinations for the following direct emitter data categories, in this action we have made final determinations for individual data elements in these categories for the reasons specified in Section II.A.5 of this preamble:

—Unit/Process Static Characteristics that are Not Inputs to Emission Equations.
—Unit/Process Operating Characteristics that are Not Inputs to Emission Equations.

Following is a summary of the major comments and responses regarding the scope of this action, EPA's approach and rationale for making confidentiality determinations, and other overarching issues. Responses to major comments on determinations for the direct emitter data elements and supplier data elements are included in Sections II.B.2 through II.B.10 (direct emitter data categories) and II.C.2 through II.C.13 (supplier data categories) of this preamble. Responses to comments on the proposed amendments to 40 CFR part 2 are included in Section II.D of this preamble. Other comments and responses thereto can be found in "Proposed Confidentiality Determinations and Data Handling Procedures for Part 98 Data: Responses to Public Comments" in Docket EPA–HQ–OAR–2009–0924 and on the Web site, *http://www.epa.gov/climatechange/emissions/ghgrulemaking.html.*

2. General Approach To Making CBI Determinations

Comment: Many commenters supported EPA's approach of grouping together similar data elements and making determinations based on their similar characteristics. Several commenters stated that the approach is reasonable and that the proposed data categories are appropriate. Many commenters agreed with EPA that this approach would speed the publication of data and reduce both the administrative burden on EPA and the amount of paperwork for reporters submitting their annual reports. Some commenters stated that this approach would benefit reporters of data determined to be CBI, as it would prevent competitors from forcing them to defend data on a case-by-case basis in Agency CBI proceedings. Another commenter stated that EPA's approach would provide certainty to the regulated community regarding which specific data elements will be afforded protection from disclosure. This commenter believes that an ad hoc approach could lead to inconsistent CBI determinations, both for the same data element in a given subpart and for similar data elements in different subparts. This commenter also stated that some small businesses may be unfamiliar with the Agency's case-by-case confidentiality claim provisions and would be placed at a disadvantage to competitors who were familiar with the case-by-case process.

Although many commenters supported EPA's approach, other commenters argued that EPA should allow reporters to submit case-by-case CBI claims with their annual reports. Some commenters questioned EPA's authority to make category-based confidentiality determinations. Several commenters argued that EPA should evaluate all CBI claims on a case-by-case basis, while others asserted that EPA should evaluate some claims this way. Some commenters argued that EPA's approach to making CBI determinations for Part 98 data was inconsistent with other EPA programs that evaluate CBI claims on a case-by-case basis. Several commenters argued that case-by-case determinations provide greater flexibility to allow the proper consideration of facility-specific issues in context and that category-wide CBI determinations would not allow for a thorough evaluation of the potential economic impacts on individual facilities from the disclosure of sensitive information. Some commenters stated that case-by-case determinations are essential because each facility's circumstances are unique. Others argued that retaining a case-by-case determination option would not preclude EPA from making the proposed category-based CBI determinations for some of the data elements.

Many commenters asserted that they preferred case-by-case determinations despite the additional work and expense it would require. These commenters stated that individual reporters should be allowed to decide whether the cost and effort involved in preparing a confidentiality claim was worthwhile. Some commenters stated that this approach would deprive regulated entities of a fair and reasonable procedure to document CBI claims. Other commenters stated that EPA's approach infringed upon the rights of regulated entities by imposing presumptive CBI determinations and not allowing individual entities to submit their own CBI claims. A few commenters argued that EPA was effectively preventing reporters from rebutting CBI determinations for Part 98 data.

Response: EPA agrees with commenters who stated that category-based CBI determinations reduce the burden on the regulated community. EPA also agrees with comments that category-based CBI determinations allow for timely publication of emission

data and data not otherwise eligible for confidential treatment. If EPA allowed individual CBI claims, EPA would likely receive a significant number of claims because of the large number of individual reporters required to submit annual reports (more than 10,000) and the large number of different data elements (more than 1,900). Facilities would likely make multiple CBI claims that would each need to be substantiated. Given the time and resources required for facilities to prepare the claims and for EPA to evaluate each individual CBI claim, timely publication of data would be difficult to achieve.

We disagree with commenters who stated that EPA does not have the authority to make category-based CBI determinations. While EPA generally makes CBI determinations on a case-by-case basis in accordance with 40 CFR part 2, EPA has authority, as demonstrated by the analogous provisions of 40 CFR 2.207 (Class Determinations), to make category-based CBI determinations where it would serve a useful purpose (40 CFR 2.207(a)(3)) and the data in a category share common characteristics that result in identical treatment of all data in the category (40 CFR 207(a)(2)). As discussed above, EPA concluded that the categorical approach, added to 40 CFR 2.301 through this action, was warranted as it will result in the timely release of data while also reducing the burden on reporting entities to substantiate multiple CBI claims for each annual report. EPA also believes that the categorical approach is appropriate in this case because there are over 1,900 Part 98 data elements included in this action and many of them share common characteristics. Consistent with the provisions of 40 CFR 2.207, EPA issued the July 2010 CBI proposals containing categorical confidentiality determinations for Part 98 data, and provided the public an opportunity to comment. EPA specifically sought comment on whether the data categories were appropriate or if they were too broad or too narrow. Based on the comments received, of the 22 data categories proposed, EPA concluded that categorical determinations were not appropriate for five data categories. For these five data categories, EPA made confidentiality determinations for individual data elements.

EPA also disagrees with the comments that the approach taken in this final action is inconsistent with the handling of CBI claims under other EPA programs or that the approach is contrary to regulatory provisions for CBI. As we explained in the July 7, 2010 CBI proposal, our CBI determinations were made using the definition of emission data at 40 CFR 2.301(a)(2)(i). EPA has used this definition of emission data for over 20 years to make decisions on individual case-by-case CBI claims. For data that did not meet the definition of emission data, we used the existing criteria from the CBI regulations at 40 CFR 2.208 to evaluate and determine the confidentiality of the Part 98 data elements in this action.

We further disagree with the comment that facility-specific issues cannot be addressed through the category-based approach taken in this final action. In the July 2010 CBI proposals, we expressly sought comment on facility-specific situations in which CBI protection should be provided. We have received comments on facility-specific issues and addressed those comments in the relevant sections of this preamble. Specifically, for the handful of data elements where commenters were able to demonstrate that conditions varied significantly among reporters, EPA decided not to make a final confidentiality determination for the particular data element in this final action. The confidentiality status of these data elements will be evaluated on a case-by-case basis, in accordance with the existing CBI regulations in 40 CFR part 2, subpart B upon receipt of a public request for these data elements.

We also disagree with the commenters who claimed that EPA should provide reporters a case-by-case determination option. As mentioned above, we have addressed the comments on facility-specific issues in this final action. We received no specific comment or information indicating, nor do we have reason to believe, that reporting facilities would have any new or different information to substantiate their CBI claims at the time they submit data beyond that information available to them during the public comment periods on the CBI proposals. We therefore do not believe that a case-by-case determination at the time of data submittal would result in a different confidentiality determination.

We further disagree with commenters who stated that EPA's approach imposed presumptive CBI determinations without allowing businesses a fair and reasonable procedure to document CBI claims. In July 2010, we proposed CBI determinations for Part 98 data elements and provided stakeholders as well as the general public an opportunity to comment on data elements as well as data categories that might qualify for CBI protection and made it clear that this was the opportunity for reporters to substantiate their CBI claims. For example, in Section I.E of the preamble to the July 7, 2010 CBI proposal, we stated that "this rulemaking provides the reporting businesses an opportunity to justify any confidentiality claim they may have for the data they are required to submit" and in Section II.B of the July 7, 2010 CBI proposal preamble we specifically solicited comment on the proposed data categories, confidentiality determinations, and any "unique circumstances * * * that would warrant making subpart-specific confidentiality determinations." Stakeholders were given a 60-day comment period to review the proposed determinations and prepare documentation substantiating any CBI claims. We consider the 60-day comment period to be more than adequate, especially in light of the 15 days businesses have under the existing CBI regulations to respond to requests for information substantiating a CBI claim (see 40 CFR 2.204(e)). During the comment periods, the reporting facilities were able to consider the Agency's proposed confidentiality determinations in preparing their CBI claims and supporting documentation; businesses do not have such insight into EPA's likely positions when substantiating CBI claims on a case-by-case basis under the existing CBI regulations that apply to non-Part 98 data. As shown in this notice, EPA considered and addressed the comments received in finalizing the confidentiality determinations in this action.

Finally, we disagree with commenters who argued that the approach we selected prevents facilities from rebutting EPA's determinations. By issuing the CBI proposals for public comment, the Agency already gave the reporting facilities an opportunity to rebut the Agency's proposed confidentiality determinations. In contrast, under the existing CBI regulations that apply to non-Part 98 data, businesses would not know of EPA's position when substantiating CBI claims and therefore would not have an opportunity to rebut EPA's position in its substantiation. Further, as discussed in more detail in the Judicial Review section above, the confidentiality determinations made in this final action are subject to judicial review under section 307(b) of the CAA, thereby offering reporters another opportunity to rebut the Agency's determination.

3. Scope of the CBI Proposal

Comment: In the July 7, 2010 CBI proposal, we included data elements from seven new subparts that had been

proposed but not yet finalized (*i.e.,* subparts I, L, W, DD, SS, RR,[3] and QQ). These seven subparts were subsequently finalized in three separate rulemakings (see 75 FR 74458, November 30, 2010; 75 FR 74774, December 1, 2010; and 75 FR 75060, December 1, 2010). During the comment period for the CBI proposal, a few commenters recommended that EPA not finalize confidentiality determinations for data elements from the seven proposed subparts until after EPA finalized those subparts. These commenters expressed concern that data elements in the finalized subparts would differ from those in the proposed subparts. The commenters therefore suggested that EPA not finalize the CBI determinations for data elements in these seven subparts without providing the public with opportunity to comment on the confidentiality determinations for any new data elements that might be added when these subparts were finalized.

The July 2010 CBI proposals also included confidentiality determinations for new and revised data elements that were proposed in three Part 98 revision notices (see 75 FR 18455, April, 12, 2010, 75 FR 33950, June 15, 2010 and 75 FR 48744, August 11, 2010). One commenter suggested that EPA allow stakeholders to submit comments on the CBI determinations for these data elements after EPA finalized the Part 98 revision notices. The commenter did not identify the specific notice or proposed data elements that were of concern.

Response: EPA has decided to undertake a separate action to determine the confidentiality status for data elements reported under subparts I, L, W, DD, SS, RR, UU, and QQ. As anticipated by some of the commenters, we made significant changes (both in number and substance) to the reporting requirements between proposal and finalization of these subparts. For instance, we added approximately 300 new data elements. Further, because EPA made substantive revisions to the subparts in response to comment (*e.g.*, revisions to the measurement and calculation methodologies), the revised and added data elements differ significantly from the data elements that were included in the July CBI proposal for these subparts. In light of the above, we have decided to re-propose confidentiality determinations for the data elements in subparts I, L, W, DD, SS, RR, UU, and QQ. We plan to issue this re-proposal and finalize the confidentiality determinations for the data elements before the March 31, 2012 reporting deadline for these subparts.[4]

However, EPA disagrees with the commenter who argued that EPA needed to allow additional time for comments on the July CBI proposals after finalization of the three proposed revisions to Part 98 covered by the CBI proposals (*i.e.,* those proposed in 75 FR 18455, April, 12, 2010, 75 FR 33950, June 15, 2010 and 75 FR 48744, August 11, 2010). The July 2010 CBI proposals included all data elements that were either revised or added in these proposed amendments. The final amendments made minor changes to certain proposed data elements, deleted data elements, and added 24 new data elements. A list of the new data elements are provided in the memorandum "Final Data Category Assignments and Confidentiality Determinations for Part 98 Reporting Elements" in Docket EPA–HQ–OAR–2009–0924 and on EPA's Web site, *http://www.epa.gov/climatechange/emissions/CBI.html*. Most of the changes to the reported data elements are editorial in nature (*e.g.,* clarifications to the existing requirements, changes to the rule citation, or corrections to cross-references) and, as revised, did not result in changes to the data category assignment or CBI determination for these data elements.

Although the July 2010 CBI proposals did not specifically address the new data elements that were added when EPA finalized these three revision notices, the CBI proposals included proposed confidentiality determinations for data elements that are of the same types as these new data elements. Having proposed and sought comment on the confidentiality determinations and supporting rationales for the same types of data in the CBI proposals, EPA does not believe that additional time is necessary for comment on these 24 new data elements for which we are finalizing determinations in this action. Based on the comments received, we are able to include in this action final confidentiality determinations for these 24 data elements consistent with the final determinations for the same types of data elements. Specifically, for each of the 24 data elements, we have identified the same type of data elements that were included in the July 2010 CBI proposals. We have assigned each of the 24 new data elements to the category with the same type of data elements, and applied the final confidentiality determinations for the assigned category to the new data element.

Where a new data element is the same type as a data element for which EPA has made an individual confidentiality determination (as opposed to a categorical determination), EPA has made the same individual determination for such new data element. The 24 data elements, their final CBI determinations, and rationales for these determinations (including examples of the same types of data elements covered in the July 2010 CBI proposals) are discussed in detail in Section II.B of this preamble for direct emitter source categories and Section II.C of this preamble for supplier source categories.

4. Inputs to Emission Equations Data Category

Comment: EPA received many comments from industry and other stakeholders regarding our July 7, 2010 CBI proposed determination that data elements in the Inputs to Emission Equations category are emission data, as defined in 40 CFR 2.301(a)(2)(i), that are ineligible for confidential treatment. Many commenters from industry disagreed with this determination. These commenters were concerned that public availability of these data elements would harm their competitive position. Other commenters supported our proposal and stated that transparency was important for building public confidence in the accuracy of the reported data and for enabling meaningful public comment on any future Climate Change policy.

Response: In the July 2010 CBI proposals, EPA proposed that the data elements in the Inputs to Emission Equations category are emission data under 40 CFR 2.301(a)(2)(i). Under the Clean Air Act section 114(c), EPA cannot protect emission data as confidential business information. EPA received comments raising serious concerns regarding potential harmful consequences from public availability of these data elements. EPA concluded that some of these comments warrant more extensive evaluation. For this reason, EPA decided not to finalize the confidentiality determination for the

[3] The reporting rules for CO_2 injection and sequestration were initially proposed under a single subpart (subpart RR). However, EPA later decided to separate subpart RR into two subparts: Geologic Sequestration of Carbon Dioxide (subpart RR) and Injection of Carbon Dioxide (subpart UU).

[4] Facilities subject to 40 CFR part 98, subpart RR must submit requests for exemption as a Research and Development Project or their proposed Monitoring, Reporting and Verification Plans in 2011. Since these documents likely will be submitted before the final confidentiality determinations for subpart RR are made, EPA will evaluate individual CBI claims regarding these two submittals on a case-by-case basis, in accordance with the existing CBI regulations in 40 CFR part 2, subpart B, either upon EPA's receipt of these documents or upon receipt of a public request for the documents. For additional information regarding these data elements, see 75 FR 75060, December 1, 2011.

data elements in the direct emitter data category Inputs to Emission Equations in this action. Instead, we recently published a "Call for Information: Information on Inputs to Emission Equations under the Mandatory Reporting of Greenhouse Gases Rule" that solicits additional information to help with the more in-depth evaluation relative to Inputs to Emission Equations (see 75 FR 81366, December 27, 2010). In addition, EPA recently published an Interim Final notice to defer reporting of these data elements on a short-term basis (75 FR 81338, December 27, 2010) and a proposal to further defer reporting of these data elements for reporting years 2011, and 2012 until March 31, 2014 (75 FR 81350, December 27, 2010). As explained in these notices, EPA concluded that it should complete its evaluation of these data elements and make final confidentiality determinations for the data elements in this category before collecting such data to avoid possibly causing unnecessary and unintentional, but irreparable, harm which reporters allege could occur if Inputs to Emission Equations were made publicly available.

In the July 7, 2010 CBI proposal, EPA defined the data elements in the Inputs to Emission Equations category as data elements that are "inputs to equations specified in Part 98 for calculating emissions to be reported by direct emitters * * * and are used by the reporting direct emitting sources to calculate their annual GHG emission under Part 98" (75 FR 39094 July 7, 2010). However, in preparing the interim final and proposed deferral notices described above, EPA noted that the July 2010 CBI proposals inadvertently included in the Inputs to Equations category 69 data elements that are information related to emissions calculations but are not the actual inputs specified in any Part 98 emission calculation. For example, a subpart may require that reporters complete a particular calculation for each unit across a facility. In this circumstance, a reporter would gather necessary data and complete the calculation for each unit. Although Part 98 specifies that reporters must complete the calculation for each unit, the actual number of units would not be an input to the emission equation based on our description of the Inputs to Equations category.

Thirty-seven data elements, listed below, were moved out of the Inputs to Equations category because after further consideration, we determined the frequency of measurement that is prescribed in the "Calculating GHG emissions" sections differs from that of the data element that is reported. For example, in Equation Y–1a in 98.253(b)(1)(ii)(a), "CC_p", the average carbon content of the flare gas combusted," is required to be monitored either daily or weekly. The daily or weekly carbon content of the flare gas combusted, however, is not required to be reported. Instead, pursuant to 98.256(e)(6), the "annual average carbon content of the flare gas" is required to be reported. Therefore, the carbon content is required to be measured and used to calculate emissions at a higher frequency than that which is required to be reported. As a result, the reporting element is an average of the actual values that are used to calculate the emissions, and is not actually used to calculate emissions. In cases such as these, we have determined that the reporting elements are not inputs to equations.

- Annual volume of flare gas combusted (reported under 40 CFR 98.256(e)(6)).
- Annual average molecular weight of the flare gas (reported under 40 CFR 98.256(e)(6)).
- Annual average Carbon content of the flare gas for each flare (reported under 40 CFR 98.256(e)(6)).
- Annual volume of flare gas combusted for each flare (reported under 40 CFR 98.256(e)(7)).
- Annual average CO_2 concentration for each flare (reported under 40 CFR 98.256(e)(7)).
- Annual average concentration of carbon containing compound other than CO_2 in the flare gas stream for each flare (reported under 40 CFR 98.256(e)(7)(i)).
- Annual volume of flare gas combusted (reported under 40 CFR 98.256(e)(8)).
- Annual average higher heating value of the flare gas (reported under 40 CFR 98.256(e)(8)).
- Annual average value of the exhaust gas flow rate reported by refineries (reported under 40 CFR 98.256(f)(7)).
- Annual average value of $\%CO_2$ reported by refineries (reported under 40 CFR 98.256(f)(7)).
- Annual average value of %CO reported by refineries (reported under 40 CFR 98.256(f)(7)).
- Annual average value of the inlet air flow rate reported by refineries (reported under 40 CFR 98.256(f)(8)).
- Annual average value of oxygen-enriched air flow rate reported by refineries (reported under 40 CFR 98.256(f)(8)).
- Annual average value of $\%O_2$ reported by refineries (reported under 40 CFR 98.256(f)(8)).
- Annual average value of $\%O_{oxy}$ reported by refineries (reported under 40 CFR 98.256(f)(8)).
- Annual average value of $\%CO_2$ reported by refineries (reported under 40 CFR 98.256(f)(8)).
- Annual average value of %CO reported by refineries (reported under 40 CFR 98.256(f)(8)).
- Annual average value of the inlet air flow rate reported by refineries (reported under 40 CFR 98.256(f)(9)).
- Annual average value of oxygen-enriched air flow rate reported by refineries (reported under 40 CFR 98.256(f)(9)).
- Annual average value of $\%N_{2oxy}$ reported by refineries (reported under 40 CFR 98.256(f)(9)).
- Annual average value of $\%N_2$ exhaust reported by refineries (reported under 40 CFR 98.256(f)(9)).
- Average coke burn-off quantity per cycle or measurement period for each catalytic cracking unit, traditional fluid coking unit, and catalytic reforming unit reported by refineries (reported under 40 CFR 98.256(f)(13)).
- Annual volume of recycled tail gas (if not used to calculate the recycling correction factor) (reported under 40 CFR 98.256(h)(5)).
- Annual average mole fraction of carbon in the tail gas (if not used to calculate recycling correction factor) (reported under 40 CFR 98.256(h)(5)).
- Annual volumetric flow discharged to the atmosphere (reported under 40 CFR 98.256(l)(5)).
- Annual average mole fraction of each GHG above the concentration threshold or otherwise required to be reported (reported under 40 CFR 98.256(l)(5)).
- Quarterly CEMS CH_4 concentration data used to calculate CH_4 liberated from degasification systems average from daily data (C) (reported under 40 CFR 98.326(i)).
- Quarterly CH_4 concentration data based on weekly sampling data (C) (reported under 40 CFR 98.326(i)).
- For landfills with gas collection systems, report total volumetric flow of landfill gas collected for destruction for the reporting year (reported under 40 CFR 98.346(i)(1)).
- Annual average CH_4 concentration of landfill gas collected for destruction (reported under 40 CFR 98.346(i)(2)).
- Monthly average temperature at which flow is measured for landfill gas collected for destruction (reported under 40 CFR 98.346(i)(3)).
- Monthly average pressure at which flow is measured for landfill gas collected for destruction (reported under 40 CFR 98.346(i)(3)).
- Cumulative volumetric biogas flow for each week that biogas is collected for destruction (if using daily sampling) (reported under 40 CFR 98.356(d)(2)).

- Weekly average CH_4 concentration for each week that biogas is collected for destruction (if using daily sampling) (reported under 40 CFR 98.356(d)(3)).
- Weekly average temperature at which flow is measured for biogas collected for destruction (if using daily sampling) (reported under 40 CFR 98.356(d)(4)).
- Weekly average moisture content for each week at which flow is measured for biogas collected for destruction (if using daily sampling) (reported under 40 CFR 98.356(d)(5)).
- Weekly average pressure for each week at which flow is measured for biogas collected for destruction (if using daily sampling) (reported under 40 CFR 98.356(d)(6)).

Because the 69 data elements are not inputs to emission equations, we did not include these data elements in the December 27, 2010 deferral actions described above. At that time, we noted that "The list of inputs to equations is slightly different than what was proposed in the July 7, 2010 CBI proposal. Reporting elements included in this category are values used by reporters to calculate equation outputs" (75 FR 81350, December 27, 2010). In this action, we reassigned each of the 69 data elements that are not the actual inputs to equations specified in Part 98 to an appropriate direct emitter data category based on the type and characteristics of each data element. As a result, these data elements are no longer in the Inputs to Equations category but are in categories with the same types of data elements. Because the July 2010 CBI proposals included for comment proposed determinations and supporting rationales for data elements that are of the same types as these 69 data elements, we believe that it is appropriate for us to take final action on the confidentiality determinations for these reassigned data elements. Specifically, where we have assigned a data element to a data category with a categorical determination, we applied the final confidentiality determination for the assigned category to the new data element. Where a new data element is assigned to a data category without a categorical confidentiality determination, we identified the same type of data element(s) in that category that were covered by the CBI proposals, and we applied the confidentiality determination for the same type of data elements to the reassigned data element. For a list of these reassigned data elements, the category to which they were assigned, and their final confidentiality status, and examples of the same type of data element indentified in the particular category, see Table C in the memorandum "Final Data Category Assignments and Confidentiality Determinations for Part 98 Reporting Elements" in Docket EPA–HQ–OAR–2009–0924 and on EPA's Web site (see *http://www.epa.gov/climatechange/emissions/CBI.html*).

5. Categorical Determinations for the Direct Emitter Categories Unit/Process Static Characteristics and Unit/Process Operating Characteristics That Are Not Inputs to Emission Equations

Comment: In the July 2010 CBI proposals, we proposed that all the data elements in the direct emitter categories Unit/Process Static Characteristics that are Not Inputs to Emission Equations and Unit/Process Operating Characteristics that are Not Inputs to Emission Equations would be non-CBI. In these proposals, we stated that the disclosure of the data elements in these data categories would be unlikely to cause competitive harm and also noted that some of the data elements were already available from other public sources. Several commenters expressed concern that EPA had not fully evaluated the potential harm of public availability of some of the data elements in these two categories and recommended that we re-evaluate the confidentiality determinations for these data elements in these two data categories. Some commenters disagreed with our conclusion that much of the data in these categories was already publicly available through other sources. Some commenters identified specific data elements and provided supporting rationale explaining why they should be eligible for confidential treatment. However, most commenters provided only broad statements that did not identify specific data elements or provide detailed supporting rationale, but instead expressed concern that disclosure of data elements in these categories could cause potential harm to some reporters.

Response: In evaluating the comments submitted, EPA determined that the comments raised issues that warranted additional consideration. Because many of the comments did not specify the data elements that were of concern, EPA decided to re-evaluate each data element in these two data categories to ensure that concerns were fully addressed. As a result of our re-evaluation, EPA decided not to make the proposed categorical determination that all data elements in these two categories are non-CBI and has determined that some of the data elements assigned to these data categories are eligible for confidential treatment. This decision was based on new information collected by the Agency and/or provided by commenters. For the summary of the comments and a detailed discussion of the rationale for final determinations for the data elements in these categories, see Sections II.B.6 and II.B.7 of this preamble.

6. Timing of the CBI Proposal

Comment: Several commenters expressed concern regarding the timing of the July 7, 2010 CBI proposal. These commenters stated that EPA should have addressed CBI in the April 10, 2009 proposal for the GHG Reporting Rule (74 FR 16448). They asserted that EPA's decision not to address CBI in the original proposal for the GHG Reporting Rule negatively affected their ability to properly evaluate Part 98 when it was initially proposed. Some commenters stated that they advocated for calculation methods that relied on mass balance equations because they believe that the inputs to those equations would be held confidential. Some commenters asserted that they would have supported third party verification had they known that reported data would not be afforded confidential treatment.

In certain circumstances, the CAA allows parties to petition EPA to reconsider aspects of newly enacted regulations implementing the CAA. Some industries petitioned EPA regarding certain aspects of the Part 98 requirements. Some commenters stated that EPA should have published the CBI proposal before discussing these petitions with industry and that EPA's decision not to do so prejudiced the industries that participated in those discussions.

Response: We disagree with commenters who stated that they did not have sufficient notice regarding types of data that would be eligible for confidential treatment because the CBI issue was not addressed during the April 10, 2009 proposal for the GHG Reporting Rule. We also disagree with commenters who suggested the timing of the CBI proposal prejudiced those reporters who entered into discussions with EPA regarding petitions for reconsideration of certain Part 98 requirements prior to the publication of the July 2010 CBI proposals. We stated in the preamble to the April 10, 2009 proposal that "emission data collected under CAA sections 114 and 208 cannot be considered CBI" (see 74 FR 16463, April 10, 2009). EPA's CBI regulations define emission data at 40 CFR 2.301; EPA used this definition to determine which Part 98 data elements are emission data and therefore not eligible for confidential treatment pursuant to

CAA section 114(c). For data that do not meet the definition of emission data, EPA considered the confidentiality determination criteria at 40 CFR 2.208 to make the CBI determinations. Both the emission data definition at 40 CFR 2.301 and the confidentiality determination criteria at 40 CFR 2.208 have been part of EPA's CBI regulations since the regulations were first promulgated in 1976. Furthermore, the comments on the original Part 98 proposal received in 2009 indicate that the commenters were aware that section 114(c) of the CAA requires that emission data cannot be protected. As evidenced by the comments, commenters were aware 15 months before EPA's publication of the July 7, 2010 CBI proposal that CAA section 114(c) requires emission data to be made publicly available (See 74 FR 56260 and 56287, October 30, 2009). Commenters who entered into discussions with EPA regarding petitions in 2010 would also have been aware of CAA section 114(c) at the time they made these agreements. In light of EPA's long-standing regulatory provisions, we reject commenters' claim that they had insufficient notice regarding EPA's approach to confidential treatment of data or that reporters who entered into settlement agreements were prejudiced.

EPA notes that many of the commenters who expressed concern with the timing of the CBI proposal were primarily concerned with EPA's proposal that data in the Inputs to Emissions Equations category would be publicly available. As discussed in more detail above, EPA is not finalizing in this action the confidentiality status for the data in the Inputs to Emission Equations category. For additional information on inputs to equations, please see Section II.A.4 of this preamble.

7. Extent To Which CEMS Can Be Used to Reduce the Number of Data Elements Disclosed to the Public

Comment: In the preamble to the July 7, 2010 CBI proposal, we noted that facilities who choose to use continuous emission monitoring systems (CEMS) may have fewer CBI concerns. As these facilities use CEMS to monitor emissions, we observed that certain data elements would not be used as inputs to emission equations, which we had proposed to be emission data and therefore subject to disclosure under CAA section 114(c). In addition, facilities using CEMS would report fewer data elements than those using emission equations (75 FR 39109, July 7, 2010). In that preamble, we requested comment on the extent to which CEMS could be used to relieve industry concerns regarding public disclosure of sensitive data. Several commenters agreed that CEMS may be a viable option for many sources because CEMS for measuring CO_2 emissions are readily available. One commenter recommended that EPA require CEMS for reporters who want to withhold sensitive data. However, other commenters stated that using CEMS is expensive and is not a cost-effective approach for determining GHG emissions. Some commenters argued that CEMS would be a viable option only for sources that have few emission points because the costs of installing and operating CEMS units on a large number of stacks would be prohibitively expensive. Other commenters argued that Part 98 does not provide all source categories an option to use CEMS to measure GHG emissions and that CEMS would not be technically achievable for some industries. For example, some commenters stated that CEMS would not be technically feasible for the fluorochemical industry because of technical difficulties in designing a CEMS for monitoring fluorinated GHG emissions. These commenters argued that CEMS used in the fluorochemical industry would have to be able to detect a wide variety of fluorinated GHGs and would also have to withstand highly corrosive operating conditions due to the presence of hydrofluoric and hydrochloric acid in the fluorochemical process vent streams.

Some commenters noted that CEMS could not be used to alleviate CBI concerns for the 2010 reporting year unless the sources had already installed CEMS to measure GHG emissions as of January 1, 2010. One commenter argued that facilities selected their 2010 monitoring methods before EPA proposed to make raw material and other throughput information public. This commenter recommended that EPA delay reporting for at least one year to allow facilities an opportunity to purchase and install CEMS before having to report their emissions.

Response: These comments relate to data elements in the Inputs to Emission Equations category, as the use of CEMS reduces the number of data elements necessary to be used as inputs to emission calculations. Currently, 20 of the 34 Part 98 subparts for direct emitters provide an option to use CEMS for determining CO_2 emissions. In addition, the Part 98 subparts for adipic acid (subpart E) and nitric acid (subpart V) allow facilities to petition EPA for approval to use N_2O CEMS. However, a CEMS option for other GHGs, such as CH_4, SF_6, and fluorinated GHGs, is not currently included in Part 98. EPA agrees with commenters that CEMS may not be practicable feasible at this time for all sources covered by the reporting rule, and therefore may not be an option in all circumstances where a reporter is concerned about the public disclosure of data they consider sensitive. We also recognize that many sources did not elect to use CEMS during the 2010 reporting period and therefore would not be able to use CEMS to mitigate their CBI concerns for the 2010 reporting year. However, as noted in Section II.A.4 of this preamble, EPA is addressing these concerns through a separate process. EPA has published an Interim Final Rule that will defer reporting of data elements in the Inputs to Emission Equation data category for the 2010 annual report (75 FR 81338, December 27, 2010) and a proposal to defer reporting of these data elements until 2014 (75 FR 81350, December 27, 2010). EPA also issued a notice announcing a call for information soliciting additional information so that EPA can adequately evaluate additional monitoring and verification approaches that would not use sensitive data elements as Inputs to Emission Equations (75 FR 81366, December 27, 2010).

8. Duration of Confidentiality Treatment

Comment: In the July 7, 2010 CBI proposal, EPA requested comment on whether there should be a time limit on protection of data determined to be CBI. A few commenters asserted that confidential treatment of CBI should be limited to a given period of time and stated that EPA should use its authority under 40 CFR 2.208(a) to disclose data when disclosure would no longer cause substantial harm to the reporters' competitive position. These commenters argued that not all of the data determined to be CBI may warrant permanent treatment as confidential. Some commenters recommended that EPA develop a process to establish the duration of the confidential status of each type of information. One commenter recommended that CBI status automatically lapse after two years unless a reporter submits a request to extend the duration of CBI protection and makes a satisfactory showing that disclosure of the data would cause substantial harm to its competitive position. This commenter suggested that a two year period was a reasonable time period because of the rate at which the market changes.

However, most commenters stated that CBI status should not be time-limited. Many stated that data designated as CBI remain relevant and

sensitive for many years after the reporting year has passed and that its disclosure at any time likely would cause competitive harm to the reporting entity. One commenter stated that industry marketing trends play out over long time frames and that competitors value market, process, and production data even after five or 10 years. One commenter recommended that CBI data remain protected as CBI for the life of the reporting entity.

Response: In the July 7, 2010 CBI proposal, we recognized that market conditions change such that data once considered CBI may become less sensitive over time. Therefore, we requested comment on whether there were any particular Part 98 data elements that would become less sensitive over time, the amount of time after which they would no longer be sensitive, and the reason for the change in the sensitivity of the data elements. Although some commenters recommended that confidentiality determinations should be time limited, the commenters did not provide information that would provide sufficient basis for EPA to limit the determinations made in this action for any particular data elements to a specific period of time. Although a commenter suggested that the confidential treatment should expire after two years, the commenter did not provide any specific information on what changes in market conditions after this two year period would result in data no longer satisfying the criteria for confidential treatment. We note that other CBI determinations made by EPA are generally not time-limited. Furthermore, today's amendment to 40 CFR 2.301 (*Special rules governing certain information obtained under the Clean Air Act*) provides procedures for EPA to modify a prior confidentiality determination (see 40 CFR 2.301(d)(4)) should certain Part 98 data no longer be entitled to confidential treatment because of changes in the applicable law or newly discovered or changed facts. This provision reflects the requirements in CBI regulations at 40 CFR 2.205(h) for modifying prior determinations for other information. We do not see a need to establish a process different from that which we had proposed for declassifying CBI.

B. Direct Emitters

1. Major Changes to Determinations

We are finalizing our category assignments for data elements in the direct emitter subparts specified in Section I.C of this preamble for 10 of the 11 direct emitter data categories and our confidentiality determinations for these 10 direct emitter data categories. As discussed in Section II.A.4 of this preamble, the confidentiality determinations for the data elements in the Inputs to Emission Equations category are not being finalized in this action. Further, as discussed in Section II.A.5 of this preamble, for the Unit/Process Static Characteristics that are Not Inputs to Emission Equations and the Unit/Process Operating Characteristics categories that are Not Inputs to Emission Equations, EPA is making final confidentiality determinations for each data element within these categories, rather than finalizing the category-wide determinations proposed in the CBI proposals.

The major changes since our CBI proposals to the 10 direct emitter data categories and the confidentiality determinations finalized in this action are summarized below.

• We have assigned certain data elements for reporting process emissions (*i.e.,* the amount of GHG generated by a production facility) at 40 CFR 98.76(a) and (b)(1), 40 CFR 98.166(a)(1) and (b)(1), and 40 CFR 98.196(a) and (b)(1) as follows for the reasons specified in Section II.B.3 of this preamble:

—For facilities that collect a portion of the CO_2 for use on site or for shipment off site, the data elements for reporting process emissions are categorized in the Unit/Process Operating Characteristics that are Not used as Inputs to Emissions Equations data category.

—For facilities that discharge all process emissions to the atmosphere, the data elements for reporting process emissions are categorized in the Emissions data category.

• We have added seven new data elements to the Emissions category for the reasons specified in Section II.B.3 of this preamble. The data elements are as follows:

—Annual emissions aggregated for all GHGs from all applicable source categories, expressed in metric tons of CO_2e calculated using Equation A–1 (reported under 40 CFR 98.3(c)(12)(i)).

—Annual emissions of biogenic CO_2, expressed in metric tons (excluding biogenic CO_2 emissions from part 75 units), aggregated for all applicable source categories (reported under 40 CFR 98.3(c)(12)(ii)).

—Annual emissions from each applicable source category, expressed in metric tons of biogenic CO_2 (excluding biogenic CO_2 emissions from part 75 units (reported under 40 CFR 98.3(c)(12)(iii)(A)).

—Annual emissions from each applicable source category, expressed in metric tons of CO_2 (including biogenic CO_2 emissions from 40 CFR part 75 units and excluding biogenic CO_2 emissions from other non-part 75 units and other source categories) (reported under 40 CFR 98.3(c)(12)(iii)(B)).

—Annual emissions from each applicable source category, expressed in metric tons of CH_4 (reported under 40 CFR 98.3(c)(12)(iii)(C)).

—Annual emissions from each applicable source category, expressed in metric tons of N_2O (reported under 40 CFR 98.3(c)(12)(iii)(D)).

—Annual emissions from each applicable source category, expressed in metric tons of each fluorinated GHG (including those not listed in Table A–1 to subpart A) (reported under 40 CFR 98.3(c)(12)(iii)(E)).

• We have moved three data elements from the Inputs to Emission Equations category to the Emissions category for the reasons specified in Section II.B.3 of this preamble. The data elements are as follows:

—Annual CO_2 emissions from each wet-process phosphoric acid process line (reported under 40 CFR 98.266(f)(2)).

—Annual volumetric flow discharged to the atmosphere from each process vent (reported under 40 CFR 98.256(l)(5)).

—Annual average mole fraction of each GHG above the concentration threshold or otherwise required to be reported (reported under 40 CFR 98.256(l)(5)).

• We have added one new data element to the Calculation Methodology and Methodological Tier category for the reasons specified in Section II.B.4 of this preamble. This data element requires facilities to indicate whether the annual volume of flare gas combusted and the annual average higher heating value of the flare gas were determined using standard conditions of 68 °F and 14.7 psia or 60 °F and 14.7 psia (reported under 40 CFR 98.256(e)(8).

• Although we proposed non-CBI determinations for the Unit/Process Static Characteristics that are Not Inputs to Emission Equations data category, we have made individual confidentiality determinations for data elements in this category in this final action.

• We have decided not to make final confidentiality determinations for the following 21 elements in the Unit/Process Static Characteristics that are Not Inputs to Emission Equations for the

reasons described in Sections II.B.6 of this preamble. These data elements are as follows:

—The annual ferroalloy product production capacity (reported under 40 CFR 98.116(a)).
—The annual lead product production capacity reported by facilities using CEMS (reported under 40 CFR 98.186(a)(2)).
—The annual lead product production capacity for facilities not using CEMS (reported under 40 CFR 98.186(b)(3)).
—The annual lead product production capacity for each smelting furnace reported by facilities not using CEMS (reported under 40 CFR 98.186(b)(3)).
—The annual lime production capacity (reported under 40 CFR 98.196(b)(15)).
—The type of nitric acid process (reported under 40 CFR 98.226(k)).
—The maximum rated throughput capacity of the catalytic cracking unit, traditional fluid coking, or catalytic reforming unit (reported under 40 CFR 98.256(f)(3)).
—The maximum rated throughput of the sulfur recovery plant (reported under 40 CFR 98.256(h)(2)).
—The maximum rated throughput of each coke calcining unit (reported under 40 CFR 98.256(i)(2)).
—The annual phosphoric acid permitted production capacity (reported under 40 CFR 98.266(b)).
—The annual phosphoric acid production capacity for each wet-process phosphoric acid process line (reported under 40 CFR 98.266(f)(3)).
—The annual production capacity of silicon carbide reported by facilities using CEMS (reported under 40 CFR 98.286(a)(3)).
—The annual production capacity of silicon carbide reported by facilities not using CEMS (reported under 40 CFR 98.286(b)(3)).
—The annual production capacity of soda ash for each manufacturing line reported by facilities using CEMS (reported under 40 CFR 98.296(a)(3)).
—The annual production capacity of soda ash reported by facilities not using CEMS (reported under 40 CFR 98.296(b)(4)).
—The annual production capacity of titanium dioxide reported by facilities using CEMS (reported under 40 CFR 98.316(a)(4)).
—The annual production capacity of titanium dioxide for each production line reported by facilities not using CEMS (reported under 40 CFR 98.316(b)(5)).
—The description of the gas collection system at an underground coal mine (reported under 40 CFR 98.326(q)).
—The annual zinc product production capacity reported by facilities using CEMS (reported under 40 CFR 98.336(a)(1)).
—The annual zinc product production capacity reported by facilities not using CEMS (reported under 40 CFR 98.336(b)(2)).
—The description and/or diagram of the industrial wastewater treatment system (reported under 40 CFR 98.356(a)).

• We have added one new data element to the Unit/Process Static Characteristics Not used as Inputs to Emission Equations category for the reasons specified in Section II.B.6 of this preamble. This data element requires municipal landfills to report a description of the aeration system used at their landfill, including aeration blower capacity (reported under 40 CFR 98.346(d)(1)) and is determined to be non-CBI.

• We have moved one data element from the Facility and Unit Identifier Information category to the Unit/Process Static Characteristics that are Not Inputs to Emission Equations data category and have made a determination that this data element is non-CBI for the reasons specified in Section II.B.6 of this preamble. This data element requires facilities to report the type of combustion unit (reported under 40 CFR 98.36(b)(2)).

• We have moved 13 data elements from Inputs to Emission Equations to the Unit/Process Static Characteristics that are Not Inputs to Emission Equations category and made the following determinations for the reasons specified in Section II.B.6. These data elements and the final determinations are as follows:

—Number of abatement technologies used at adipic acid production plants (reported under 40 CFR 98.56(e)) is not CBI.
—Number of cement kilns (reported under 40 CFR 98.86(b)(4)) is not CBI.
—Total number of glass furnaces (reported under 40 CFR 98.146(b)(8)) is not CBI.
—Total number of lead smelting furnaces (reported under 40 CFR 98.186(b)(5)) is not CBI.
—Number of nitric acid trains (reported under 40 CFR 98.226(f)) is not CBI.
—Number of wet-process phosphoric acid lines (reported under 40 CFR 98.266(f)(7)) is not CBI.
—Number of separate chloride process lines located at titanium dioxide production facilities (reported under 40 CFR 98.316(b)(14) is not CBI.
—Number of Waelz kilns used for zinc production (reported under 40 CFR 98.336(b)(4)) is not CBI.
—Number of electrothermic furnaces used for zinc production (reported under 40 CFR 98.336(b)(5)) is not CBI.
—Total number of delayed coking units (reported under 40 CFR 256(k)(3)) is not CBI.
—The typical drum or vessel outage (reported under 40 CFR 98.256(k)(3)) is CBI.
—The number of delayed coking drums or vessels (reported under 40 CFR 98.256(k)(3)) is CBI.
—The number of delayed coking drums in a set (reported under 40 CFR 98.256(k)(4)) is CBI.

• We have double listed five data elements in the Unit/Process Static Characteristics that are Not Inputs to Emission Equations category and in the Inputs to Emission Equations category. For those reporters who do not use the data elements in the specified equations, the data elements are in the Unit/Process Static Characteristics that are Not Inputs to Emission Equations. We have made the following determinations and for the reasons specified in Section II.B.6:

—Number and type of each source of equipment leaks at petroleum refineries when reported by facilities not using Equation Y–21 to calculate emissions (reported under 40 CFR 98.256(n)(3)) is not CBI.
—Year in which a closed municipal landfill last accepted waste and year an open municipal landfill expects to close, where reported by landfills that do not use Equation HH–3 (reported under 40 CFR 98.346(a)) is not CBI.
—Capacity of the municipal landfill, where reported by open landfills and by closed landfills that do not use Equation HH–3 (reported under 40 CFR 98.346(a)) is not CBI.
—Year in which a closed industrial landfill last accepted waste and year an open industrial landfills expects to close, where reported by landfills that do not use Equation TT–4 (reported under 40 CFR 98.466(a)(3)) is not CBI.
—Capacity of the industrial landfill, where reported by open landfills and by closed landfills that do not use Equation TT–4 (reported under 40 CFR 98.466(a)(4)) is not CBI.

• Although we proposed a non-CBI determination for all data in the Unit/Process Operating characteristics that are not Inputs to Emission Equations category, we have made individual confidentiality determinations for the data elements in this category in this final action. Specifically, we have determined that the following data elements in this category qualify as CBI as discussed in Section II.B.7 of this preamble:

—The reason for submitting a Best Available Monitoring Methods (BAMM) extension request (reported under 40 CFR 98.3(d)(2)(ii)(C)).
—The reason why equipment was not or could not be obtained and installed during a planned shutdown between October 30, 2009 and April 1, 2010 as reported in a BAMM extension request (reported under 40 CFR 98.3(d)(2)(ii)(E)).
—Planned installation date for monitoring equipment as reported in a BAMM extension request (reported under 40 CFR 98.3(d)(2)(ii)(F)).
—The anticipated date on which a facility applying for a BAMM extension will begin using the monitoring methods specified in Part 98 (reported under 40 CFR 98.3(d)(2)(ii)(F)).
—The sampling analysis results of carbon content of feedstock as determined from QA/QC supplier data under 40 CFR 98.74(e) by ammonia manufacturing facilities (reported under 40 CFR 98.76(b)(6)).
—The mass fraction of each sample analyzed for all tests used to verify the carbonate-based mineral mass fraction of raw materials charged to glass manufacturing facilities (reported under 40 CFR 98.146(b)(5)(iii)).
—The explanation of change greater than 30 percent in a magnesium production facility's cover gas usage rate (reported under 40 CFR 98.206(g)).
—The types of materials loaded that have an equilibrium vapor phase concentration of CH_4 of 0.5 volume per cent or greater (reported under 40 CFR 98.256(p)(2).
—The sampling analysis results for carbon content of petroleum coke consumed by a silicon carbide production facility as determined for QA/QC of data provided by raw material suppliers (reported under 40 CFR 98.286(b)(7)).
—The sampling analysis results of carbon content of petroleum coke consumed by titanium dioxide production facilities for QA/QC of data provided by raw material suppliers (reported under 40 CFR 98.316(b)(13)).

• We have added the following four new data elements to the Unit/Process Operating Characteristics that are Not Inputs to Emission Equations category and have also determined that these data elements are not CBI for the reasons specified in Section II.B.7 of this preamble. The data elements are as follows:

—Indication of whether active aeration of the waste in the landfill was conducted during the reporting year (reported under 40 CFR 98.346(d)(1)).
—Fraction of the landfill containing waste affected by the aeration (reported under 40 CFR 98.346(d)(1)).
—Total number of hours during the year the aeration blower was operated (reported under 40 CFR 98.346(d)(1)).
—Other factors used as a basis for the selected methane correction factor (MCF) value (reported under 40 CFR 98.346(d)(1)).

• We have moved 37 data elements from the Inputs to Emission Equations category to the Unit/Process Operating Characteristics that are Not Inputs to Emission Equations category for the reasons specified in Section II.B.7 of this preamble. A list of these data elements is provided in the memorandum "Final Data Category Assignments and Confidentiality Determinations for Part 98 Reporting Elements" (see Docket EPA–HQ–OAR–2009–0924 and the Web site (*http://www.epa.gov/climatechange/emissions/ghgrulemaking.html*). We have determined that the following data elements are CBI:

—Annual average value of the inlet air flow rate reported by refineries (40 CFR 98.256(f)(8)).
—Annual average value of oxygen-enriched air flow rate reported by refineries (40 CFR 98.256(f)(8)).
—The average annual value of $\%O_{oxy}$ reported by refineries (40 CFR 98.256(f)(8)).
—Annual average value of the inlet air flow rate reported by refineries (reported under 40 CFR 98.256(f)(9)).
—Annual average value of oxygen-enriched air flow rate reported by refineries (reported under 40 CFR 98.256(f)(9)).
—Annual average value of $\%N_{2oxy}$ reported by refineries (reported under 40 CFR 98.256(f)(9)).
—Number of regeneration cycles or measurement periods during the reporting year for each catalytic cracking unit, traditional fluid coking unit, and catalytic reforming unit reported by refineries (reported under 40 CFR 98.256(f)(13)).
—Average coke burn-off quantity per cycle or measurement period for each catalytic cracking units, traditional fluid coking units, and catalytic reforming units reported by refineries (reported under 40 CFR 98.256(f)(13)).

• We have decided not to make final confidentiality determinations for the following seven data elements in the Unit/Process Operating Characteristics that are Not Inputs to Emission Equations for the reasons described in Sections II.B.6 of this preamble. These data elements are as follows:

—Annual average value of the exhaust gas flow rate reported by refineries (40 CFR 98.256(f)(7)).
—Annual average value of $\%CO_2$ reported by refineries (40 CFR 98.256(f)(7)).
—Annual average value of %CO reported by refineries (40 CFR 98.256(f)(7)).
—Annual average value of $\%O_2$ reported by refineries (40 CFR 98.256(f)(8)).
—Annual average value of $\%CO_2$ reported by refineries (40 CFR 98.256(f)(8)).
—Annual average value of %CO reported by refineries (40 CFR 98.256(f)(8)).
—Annual average value of $\%N_2$ exhaust reported by refineries (reported under 40 CFR 98.256(f)(9)).

• We have double listed six data elements in the Unit/Process Operating Characteristics that are Not Inputs to Emission Equations category and in the Inputs to Emission Equations category. For those reporters who do not use the data elements in the specified equations, the data elements are in the Unit/Process Operating Characteristics that are Not Inputs to Emission Equations and have the following determinations for the reasons specified in Section II.B.7 of this preamble:

—Annual volume of recycled tail gas (if not used to calculate the recycling correction factor (reported under 40 CFR 98.256(h)(5)) is CBI.
—Annual average mole fraction of carbon in the tail gas (if not used to calculate recycling correction factor) (reported under 40 CFR 98.256(h)(5)) is CBI.
—Weekly average temperature at which flow is measured for biogas collected for destruction (if using daily sampling) (reported under 40 CFR 356(d)(4)) is not CBI.
—Weekly average moisture content for each week at which flow is measured for biogas collected for destruction (if using daily sampling) (reported under 40 CFR 356(d)(5)) is not CBI.
—Weekly average pressure for each week at which flow is measured for biogas collected for destruction (if using daily sampling) (reported under 40 CFR 98.356(d)(6)) is not CBI.
—Surface area at the start of the reporting year for the landfill sections that contain waste and that are associated with the selected cover type for facilities that do not use a landfill gas collection system (reported under 40 CFR 98.466(e)(2)) is not CBI.

• We have moved seven data elements from the Calculation

Methodology and Methodological Tier category to the Test and Calibration Methods category for the reasons specified in Section II.B.8 of this preamble:

—The basis for the unit-specific factor (*i.e.,* select from average of multiple source tests; single source test within last 5 years; single source test more than 5 years ago; source test of identical unit at same facility) (40 CFR 98.256(i)(8)).

—The basis for the CO_2 emission factor used in Equation Y–16b (40 CFR 98.256(j)(8)).

—The basis for the carbon emission factor used in Equation Y–16b (40 CFR 98.256(j)(8)).

—Indication of the measurement or estimation method used for measuring volumetric flow discharge for each process vent (40 CFR 98.256(l)(5)).

—Indication of the measurement or estimation method used for measuring average mole fraction of each GHG for each process vent (40 CFR 98.256(l)(5)).

—The basis for the CH_4 emission factor used (*i.e.,* select from weekly or more often measurements; Periodic (less frequent than weekly) measurements; average of multiple source tests; one-time source test; default factor) for uncontrolled blowdown systems (40 CFR 98.256(m)(3)).

—Basis for the mole fraction of CH_4 in the vent gas from the unstabilized crude oil storage tank (*i.e.,* measurement of methane composition; engineering estimate of methane composition based on crude composition; default) for storage tanks that process unstabilized crude oil (40 CFR 98.256(o)(4)(vi)).

• We have moved two data elements from the Inputs to Emission Equations category to the Test and Calibration Methods category for the reasons specified in Section II.B.8 of this preamble:

—Date of measurement of the volumetric flow rate for each ventilation monitoring point (40 CFR 98.326(f)).

—Date of measurement of methane concentration for each ventilation monitoring point (40 CFR 98.326(g)).

• We have moved three data elements from the Inputs to Emission Equations category to the Production/Throughput Data that are Not Inputs to Emission Equations for the reasons specified in Section II.B.9 of this preamble:

—Annual quantity of petrochemicals produced (40 CFR 98.246(a)(5)).

—Volume or mass of off-specification product produced (40 CFR 98.246(a)(9)).

—Monthly production of titanium dioxide for each production process (40 CFR 98.316(b)(8)).

• We have double listed two data elements in the Production/Throughput Data that are Not Inputs to Emission Equations and in the Inputs to Emission Equations category. For those reporters who do not use the data elements in the specified equations, the data elements are in the Production/Throughput Data that are Not Inputs to Emission Equations and have the following determinations for the reasons specified in Section II.B.9 of this preamble:

—Cumulative volumetric biogas flow for each week that biogas is collected for destruction reported by wastewater treatment facilities using daily sampling (40 CFR 98.356(d)(2)).

—Weekly average CH_4 concentration for each week that biogas is collected for destruction reported by wastewater treatment facilities using daily sampling (40 CFR 98.356(d)(3)).

• Although we had proposed that the data element that requires reporting of the annual quantity of CO_2 captured for use on site (40 CFR 98.196(b)(17)(i)) to be in the Unit/Process Operating Characteristics that are Not used as Inputs to Emissions Equations Data category, we have moved this data element to the Production/Throughput Data that are Not Inputs to Emission Equations Data category for the reasons specified in Section II.B.9 of this preamble.

The rationale for these changes can be found in Sections II.B.2 through II.B.10 of this preamble and in the "Proposed Confidentiality Determinations and Data Handling Procedures for Part 98 Data: Responses to Public Comments" (available in the Docket EPA–HQ–OAR–2009–0924 and on the Web site (*http://www.epa.gov/climatechange/emissions/ghgrulemaking.html*).

A list of all the direct emitter data elements and their category assignment under this final action is provided, by subpart and data category, in a memorandum (see "Final Data Category Assignments and Confidentiality Determinations for Part 98 Reporting Elements" in Docket EPA–HQ–OAR–2009–0924) and on the Web site (*http://www.epa.gov/climatechange/emissions/ghgrulemaking.html*).

2. Facility and Unit Identifier Information Category

Comment: Only a few commenters submitted comments on this data category. The majority of those providing comments agreed with EPA's proposed determination that the data elements in this category are not eligible for confidential treatment because they meet the definition of emission data in 40 CFR 2.301(a)(2)(i). One commenter agreed with EPA's determination that the phrase "identity * * * of any emission" in 40 CFR 2.301(a)(2)(i)(A) refers not only to the names of the pollutants being emitted, but also includes other identifying information, such as plant name, address, city, state, zip code, emission point or device description, and North American Industry Classification System (NAICS) code.

Although most commenters agreed with the proposed determination for this category, one commenter stated that the customer meter number and combustion unit identifiers reported in accordance with 40 CFR 98.36(c)(1) and (c)(3) should be held as confidential.

Response: The few commenters who disagreed with our proposed determination for this data category did not provide any rationale or facts explaining why the data in this category do not meet the definition of emission data at 40 CFR 2.301(a)(2)(i), as we proposed in the July CBI proposal. Rather, they claimed that the data elements in this category are sensitive and therefore, qualify as CBI. However, CAA section 114(c) does not afford confidential treatment to emission data, even if they were CBI. In any case, except for the comments discussed below on certain specific data elements, the commenters made general and conclusory CBI claims; they did not provide facts or rationales explaining why any of the data elements in this category are CBI. On the other hand, we note that many of the data elements assigned to the category are already available to the public through other sources. For example, the name and location of a facility and descriptions of emission units are included in construction and operating permits (*e.g.,* PSD and Title V permits).

With respect to the specific comment on the customer meter number and combustion unit identifiers that were required under 40 CFR 98.36(c)(1) and (c)(3) at the time of CBI proposal, these data elements are no longer required to be reported under 40 CFR part 98, subpart C (see the amendments to this subpart published in 75 FR 79092, December 17, 2010). Therefore, according to the comment, there is no CBI concern.

3. Emissions Category

New Data Elements: In this final action, we have added the following seven new data elements to this data category:

• Annual emissions aggregated for all GHGs from all applicable source categories, expressed in metric tons of CO_2e calculated using Equation A–1 (reported under 40 CFR 98.3(c)(12)(i)).

• Annual emissions of biogenic CO_2, expressed in metric tons (excluding biogenic CO_2 emissions from part 75 units), aggregated for all applicable source categories (reported under 40 CFR 98.3(c)(12)(ii)).

• Annual emissions from each applicable source category, expressed in metric tons of biogenic CO_2 (excluding biogenic CO_2 emissions from 40 CFR part 75 units (reported under 40 CFR 98.3(c)(12)(iii)(A)).

• Annual emissions from each applicable source category, expressed in metric tons of CO_2 (including biogenic CO_2 emissions from 40 CFR part 75 units and excluding biogenic CO_2 emissions from other non-part 75 units and other source categories) (reported under 40 CFR 98.3(c)(12)(iii)(B)).

• Annual emissions from each applicable source category, expressed in metric tons of CH_4 (reported under 40 CFR 98.3(c)(12)(iii)(C)).

• Annual emissions from each applicable source category, expressed in metric tons of N_2O (reported under 40 CFR 98.3(c)(12)(iii)(D)).

• Annual emissions from each applicable source category, expressed in metric tons of each fluorinated GHG (including those not listed in Table A–1 of subpart A) (reported under 40 CFR 98.3(c)(12)(iii)(E)).

These new data elements were added to subpart A by the amendments published on December 17, 2010 (75 FR 79092) and were not included in the July 2010 CBI proposals. The new data elements require the reporting of GHG emissions data for combustion units, which are the same type of data as all the other data elements in the Emissions category. Because the CBI proposals addressed the same type of data elements, we do not see a need to propose confidentiality determination for these new data elements before taking final action. We conclude that it is appropriate to include these seven data elements in this data category and finalize their confidentiality determinations as part of this data category in this action.

Moved Data Elements: In this final action, we have moved the following data elements to the Emissions category from the Inputs to Emission Equations category:

• Annual CO_2 emissions from each wet-process phosphoric acid process line (reported under 40 CFR 98.266(f)(2)).

• Annual volumetric flow discharged to the atmosphere from each process vent (reported under 40 CFR 98.256(l)(5)).

• Annual average mole fraction of each GHG above the concentration threshold or otherwise required to be reported (reported under 40 CFR 98.256(l)(5)).

These data elements require the reporting of GHG emissions or information about the rate or concentration of GHG emissions into the atmosphere from phosphoric acid manufacturing plants and process vents at petroleum refineries. These data elements were inadvertently placed in the Inputs to Emission Equations category in the July 7, 2010 CBI proposal and have been moved to this category because they are the same type of data (*i.e.* information regarding the quantity and characteristics of GHG emissions) as all the other data elements in the Emissions category. Because these data elements are the same type of data as the other elements in this category, we have concluded that the emission data determination applied to this category also applies to these three data elements and finalize this determination in this action.

Comment: In the July 7, 2010 CBI proposal, EPA proposed that the data elements in this data category would not be eligible for confidential treatment because they met the definition of emission data in 40 CFR 2.301(a)(2)(i). Most commenters agreed with this proposed determination. Some commenters noted that this type of information is often reported to EPA and State and local agencies by facilities as part of compliance certification and deviation reports and is made available to the public in annual emission inventories. Some commenters noted that information about emissions is not sensitive, and others argued that disclosure of GHG emissions is critical to furthering public understanding of the sources of GHG emissions and to enabling stakeholder participation in the critique and analysis of any future GHG rulemaking.

Although many commenters supported the disclosure of GHG emission data and agreed that these data meet the definition of emission data, some commenters expressed concern that the disclosure of emissions data for individual process lines or units would cause competitive harm to their businesses. These commenters were concerned that emissions information could be used to calculate other data they consider to be sensitive and would harm their competitive position. For example, some commenters recommended that the annual CO_2 process emissions for units should be held as confidential because they claimed that it may be used to determine sensitive information about manufacturing capacities and material throughouts.

A few commenters noted that some data elements included in this data category do not meet the definition of emission data because some of the CO_2 generated by a process are collected and therefore, not emitted to the atmosphere. In particular, these commenters noted that the annual CO_2 process emissions reported by ammonia production plants (see 40 CFR 98.76(b)(1)) may include CO_2 that is not released to the atmosphere because some ammonia plants collect CO_2 for use in other processes (*e.g.,* production of urea). Some commenters recommended that process emissions should be held confidential because such data might be used to determine sensitive information about manufacturing capacities and material throughput.

Response: EPA learned from some commenters that in certain situations some of the CO_2 generated by a process are collected and either used onsite (*e.g.,* urea manufacture) or transferred off site. In three subparts,[5] the CO_2 that is collected is reported as "CO_2 process emissions." In those few situations where a reporter collects a portion of the CO_2 generated by a process, EPA agrees that the following data elements 40 CFR 98.76(a) and(b)(1), 40 CFR 98.166(a) and (b)(1), and 40 CFR 98.196(a) and (b)(1) do not reflect the emissions "which has been emitted by the source" and therefore do not meet the definition of emission data in 40 CFR 2.301(a)(2)(i). In these limited situations, the data element is assigned in this final action to the data category Unit/Process Operating Characteristics that are Not Inputs to Emission Equations and is determined to be non-CBI.[6] However, for those facilities where a reporter does not collect the CO_2 generated by a process such that the CO_2 is emitted into the atmosphere, the data element remains in the Emissions Data Category.

As described above, some commenters expressed concern with our proposed determination, because they claimed that some of the data elements in this category are sensitive business information the disclosure of which could cause competitive business harm.

[5] 40 CFR part 98, subpart G (Ammonia Manufacturing), subpart P (Hydrogen Production), and subpart S (Lime Manufacturing).

[6] Please see Section II.B.8 for the discussion on the confidentiality determination for these data elements.

However, these commenters did not provide any rationale or facts explaining why the data in this category do not meet the definition of emission data at 40 CFR 2.301(a)(2)(i), as we proposed in the July CBI proposal. Rather, they claimed that the data elements in this category are sensitive and therefore, qualify as CBI. However, CAA section 114(c) does not afford confidential treatment to emission data, even if they were sensitive. On the other hand, we note that data elements similar to the data elements included in this category are available to the public through other sources. For example, unit level emissions of certain pollutants are available through the National Emissions Inventory. We therefore conclude that our proposed determination for this data category is appropriate and finalize that determination in this action.

4. Calculation Methodology and Methodological Tier Category

New Data Elements: EPA has added one new data element to this data category. This new data element requires refineries to indicate whether the annual volume of flare gas combusted and the annual average higher heating value of the flare gas were determined using standard conditions of 68 °F and 14.7 psia or the alternative conditions of 60 °F and 14.7 psia (reported under 40 CFR 98.256(e)(8)). This data element is used to determine which of the two possible values of the molar volume conversion factor should be used as an input to the emission equation and therefore is used to determine the correct methodology for calculating emissions. Although this new data element was added to Part 98 after the July 2010 CBI proposals and therefore not included in the CBI proposals (see 75 FR 79092, December 17, 2010), it is the same in type and characteristics to other data elements assigned to this category and for which confidentiality determination was proposed in the CBI proposals (*e.g.,* temperature at which gaseous feedstock and volumes were determined (reported under 40 CFR 98.246(a)(4) and type of fuel combusted (reported under 40 CFR 98.36(b)(4)). Because the CBI proposals addressed the same type of data elements, we do not see a need to propose confidentiality determination for this new data element before taking final action. We therefore conclude that it is appropriate to assign this data element to this data category and finalize its confidentiality determination as part of this data category in this action.

Comment: In the July 7, 2010 CBI proposal, EPA proposed that the data in this category meet the definition of emission data at 40 CFR 2.301(a)(2)(i) and therefore, are not eligible for confidential treatment. Several commenters agreed that the data elements in this data category are not entitled to confidential treatment. Some commenters stated that the information was not sensitive or proprietary. One commenter noted that this type of information is provided in compliance certifications under other regulations.

However, other commenters disagreed with EPA's proposed determination for this data category. Some commenters stated that the methodology used by a reporting facility to calculate its GHG emissions was sensitive and should be considered confidential. Others believed that the capacity of a combustion unit (reported under 40 CFR part 98, subpart C and used to determine the appropriate Tier for calculating CO_2, N_2O and CH_4 emissions from combustion units) can be used by competitors to assess production capabilities and derive market strategies that would cause competitive harm to the reporter if disclosed to the public. Some commenters stated that the type of fuel used (reported under 40 CFR part 98, subpart C and used to determine the appropriate Tier for calculating CO_2, N_2O and CH_4 emissions from combustion units) is proprietary information that could be used to determine cost structure. One commenter stated that some facilities use unconventional fuels in their process and that the use of these fuels is not known by their competitors. This commenter argued that the use of these unconventional fuels represents a key competitive advantage for such facilities and should be considered CBI.

One commenter stated that certain data reported under 40 CFR part 98, subpart TT (Industrial landfills), including the types of materials in each waste stream and the method for estimating historical waste disposal quantities would allow a competitor to determine process-specific information, such as production quantities, that would be harmful to the competitive position of reporters.

Response: As described in Section II.C.5 of the preamble to the July 7, 2010 CBI proposal, the data elements in the Calculation Methodology and Methodological Tier category consist of the methodology and other information, such as unit capacity and fuel type, that are necessary to determine that the emissions were calculated using an appropriate methodology. EPA therefore proposed to determine that the data elements in this category meet the definition of emission data at 40 CFR 2.301(a)(2)(i). Although some commenters argued that the data elements in this category are sensitive, none claimed nor provided information that these data elements do not meet the definition of emission data in 40 CFR 2.301(a)(2)(i).

Further, the type of fuel required to be reported is generic information that would not reveal specific information about the composition of the fuel. For example, a facility that burns waste process gases from a manufacturing process is required to report only that they combust "off-gas." Similarly, the maximum capacity of a combustion unit is already publicly available from other sources (*e.g.,* Title V permits). Further, we disagree with the commenter who stated that the types of materials in each waste stream and the method for estimating historical waste disposal quantities reported under 40 CFR part 98, subpart TT (Industrial Landfills) are sensitive or proprietary. To estimate the historical amount of waste sent to an industrial landfill, facilities select one of the methods specified in the rule. The methods include direct measurement of the waste and an alternative estimation method for use by reporters who do not have measurement records of the waste disposed. The method used by the reporter does not disclose any information about the design or operating characteristics of production processes, historical production volumes, or any other production-related information. For the types of materials in each waste stream, facilities select from the generic list of waste types specified in the rule under Table TT–1, an approach that does not reveal any proprietary or sensitive information about a process.

5. Data Elements Reported for Periods of Missing Data That Are Not Inputs to Emission Equations Category

Comment: Many commenters on this data category agreed with EPA's proposed determination that the data elements meet the definition of emission data in 40 CFR 2.301(a)(2)(i) and therefore do not qualify for confidential treatment. One commenter stated that the data elements in this category should be public because poor equipment operation, failure to collect required data, and other factors undermine the availability of accurate and complete emissions data. Other commenters agreed that the method used to calculate substitute values should be publicly available and noted that protocols for determining substitute

values are often included in State and local regulations.

However, other commenters argued that the method used to estimate the missing data constitutes sensitive business information, while others asserted that the time period over which data is missing is sensitive. Another commenter stated that detailed discussions of what data were missing, why they were missing, and how a facility generated substitute values provide insight into a facility's underlying process operations and therefore should be handled as CBI.

Response: Although some commenters disagreed with EPA's proposed determination that the data elements in this data category are emission data, none of the commenters provided rationale for how the data in this category does not meet the definition of emission data or any information to refute or alter EPA's assessment that the data elements in this category are needed to determine whether a reasonable methodology was used to determine substitute values, and whether the annual GHG emissions are correctly calculated, thus qualifying these data as emission data under 40 CFR 2.301(a)(2)(i). This data category includes data elements that indicate the overall quality and reliability of the reported GHG emissions, such as the number of times substitute values are used, reasons for using substitute values, and the method used to determine a substitute value. For reasons described above and in Section II.C.6 of the proposal preamble (75 FR 39094, July 7, 2010), EPA has determined in this final action, that the data elements in this data category are necessary to determine the amount of reported emissions and therefore qualify as emission data under 40 CFR 2.301(a)(2)(i).

6. Unit/Process Static Characteristics That Are Not Inputs to Emissions Equations Category

New Data Elements: EPA has added one new data element to this data category. This data element requires municipal landfills to report a description of the aeration systems used at their landfills, including the aeration blower capacity (reported under 40 CFR 98.346(d)(1)). This new data element was added to subpart HH by the amendments published on October 28, 2010 (75 FR 66434) and was not included in the July 2010 CBI proposals. This data element is the same type of data as other data elements included in this category in the CBI proposals (*e.g.,* description of the landfill gas collection system (reported under 40 CFR 98.346(i)(7)). For the same reasons set forth below and in Section II.C.7 of the July 7, 2010 CBI proposal (see 75 FR 39111) for the same types of data in this category, we have determined that this data element is not CBI. Specifically, this data element would provide only general, non-sensitive, information (*e.g.,* such as the blower capacity for aeration system); such general information would not reveal the mechanics or any innovative aspects of the system's design and operation that might be considered as trade secret or CBI.

Moved and Double-Listed Data Elements: EPA reassigned one data element from the Facility and Unit Identifier Information category and 13 data elements from the Inputs to Emission Equations category to this data category. EPA has also double-listed [7] five data elements in both the Inputs to Emission Equations category and this category. These data elements are listed in Section II.B.1 of this preamble and share the same characteristics as those data elements previously assigned to the Unit/Process Static Characteristics that are not Inputs to Emission Equations category in the July 2010 CBI proposals. Specifically, they consist of operating characteristics that do not change over time that are not used as inputs to emission equations. As with other data elements in this category, none of the 19 data elements added to this data category meet the definition of emission data at 40 CFR 2.301(a)(2)(i)(A) because they are not "* * * information necessary to determine the identity, amount, frequency, concentration, or other characteristics (to the extent related to air quality) of any emission which has been emitted by the source * * *" As explained in more detail below, in response to comments, EPA re-evaluated the data elements in this data category and concluded that the proposed categorical determination of non-CBI may not be appropriate for all the data elements in this category. Based on the comments and EPA's re-evaluation, EPA concluded that three of the 19 data elements moved to this data category are entitled to confidential treatment. The three data elements determined to be CBI in this action are:

- The typical drum or vessel outage (40 CFR 98.256(k)(3));
- The total number of delayed coking drums or vessels (40 CFR 98.256(k)(3)); and
- The number of delayed coking drums in the set (40 CFR 98.256(k)(4)).

These data elements can be used by competitors to determine the actual raw material input to a delayed coking unit and would provide insight into innovative operating practices that are considered sensitive by the reporter because they provide the reporter with a competitive advantage over other refineries. For example, changes in operating practices can produce increases in production capacity without adding new drums/vessels. Further, comments from refineries indicate that they consider these data elements to be sensitive and take precautions to ensure this information is not made public. We are also not aware of any public sources for these data elements. For the reasons described above, we conclude that these three data elements are CBI.

With respect to the remaining 16 data elements that are reassigned to this data category, most include the number of emission units, production lines, or abatement devices (*e.g.,* number of cement kilns reported by facilities not using CEMS, number of nitric acid trains) or descriptions of the units (see Section II.B.1 of this preamble for the list of reassigned data elements). They also include the year in which a landfill closed (reported under 40 CFR 98.346(a) by closed municipal landfills that do not use Equation HH–3 to calculate emissions and 40 CFR 98.466(a)(3) by closed industrial landfills not using Equation TT–4), an estimate of the year in which an open landfill expects to close (reported under 40 CFR 98.346(a) by open municipal landfills and 40 CFR 98.466(a)(3) by open industrial landfills), capacity of municipal and industrial landfills (reported under 40 CFR 98.346(a) by closed municipal landfills not using Equation HH–3 and by all open municipal landfills; and 40 CFR 98.466(a)(4) by closed industrial landfills not using Equation TT–4 to calculate emissions and by all open industrial landfills). These data elements have been moved to this category because they are the same type of data as many other data elements already assigned to this data category (*e.g.,* number of cement kilns reported by facilities using CEMS, reported under 40 CFR 98.86(a)(3)). For the reasons discussed in more detail in Section II.C.7 of the July 7, 2010 CBI proposal (see 75 FR 39111), EPA has concluded the disclosure of these data elements is unlikely to cause competitive harm. These data elements do not provide insight into current production rates, raw material consumption, or other information that competitors could use to discern market share and other

[7] For those reporters who do not use the data elements in the equations specified in Section II.B.1 of this preamble, the data elements are in the Unit/Process Static Characteristics that are Not Inputs to Emission Equations.

sensitive information. The number of production units and control devices, general information regarding the type of combustion unit (*e.g.,* whether the unit is a boiler, flare, internal combustion engine, process heater, *etc.*), the design capacity of a landfill, and dates of closure or expected closure constitute general information that is already available to the public through other sources (*e.g.,* Title V operating permits). Although only general information regarding the type of combustion unit is available in permits, detailed information on the type of combustion devices is available from other public sources, (*e.g.,* National Emissions Inventory).

Comment: This data category primarily includes information about the number and capacity of process lines and production units, though it also includes a few unique data elements that require reporting of the specific type of unit or descriptions of processes. Some commenters agreed with EPA's determination that the data in this category is not CBI because it is either already available to the public through other sources (*e.g.,* Title V permits, NEI) or is not likely to cause competitive harm if made available. However, several commenters expressed concern that competitors could use some data elements in this category (*e.g.,* number and capacity of production units/process lines), in combination with other data to infer information about individual facilities, potentially causing reporters competitive harm. In particular, some commenters were concerned that capacity information, such as the annual capacity of process line or production unit, could be used to determine whether a competitor has available capacity to expand production to meet increased market demand. These commenters argued that a competitor could use this information, in combination with actual production data, to develop market strategies that would be harmful to a reporter. Some commenters recommended that EPA allow reporters to make individual case-by-case CBI claims for data elements in this data category.

Response: The commenters raised a concern that the proposed non-CBI determination may not be appropriate for certain data elements in this category. Note that EPA did not receive comments specific to the data elements in this category objecting to our proposed determination that the data elements in this category do not meet the definition of emission data because none of the data elements are inputs to equations/calculation methods or information otherwise needed to calculate or determine emissions. We therefore conclude that the proposed determination was appropriate in this regard and finalize in this action our determination that the data elements in this category are not emission data under 40 CFR 2.301(a)(2)(i).

In response to the comments that a non-CBI determination for this category was not appropriate, EPA decided to re-evaluate each data element assigned to this data category to determine if the proposed determination applies. As part of this process, EPA reviewed public comments regarding specific data elements, conducted additional reviews of alternative public sources (*e.g.,* Title V permits, NEI databases) and re-evaluated whether public availability of each data element would be likely to cause harm to the competitive position of the reporter. Through this process, we have determined that only three of the data elements assigned to the Unit/Process Static Characteristics category are eligible for confidential treatment.

- The typical drum or vessel outage (40 CFR 98.256(k)(3));
- The total number of delayed coking drums or vessels (40 CFR 98.256(k)(3)); and
- The number of delayed coking drums in the set (40 CFR 98.256(k)(4)).

These three data elements were added to this category in this final action. For the explanation of why these data elements are determined to be CBI, please see the discussion of moved and double-listed data elements listed above for Section II.B.6.

Based on our review, EPA has decided not to make a final determination for the following 21 data elements in this data category:

- The annual ferroalloy product production capacity (reported under 40 CFR 98.116(a)).
- The annual lead product production capacity reported by facilities using CEMS (reported under 40 CFR 98.186(a)(2)).
- The annual lead product production capacity for facilities not using CEMS (reported under 40 CFR 98.186(b)(3)).
- The annual lead product production capacity for each smelting furnace reported by facilities not using CEMS (reported under 40 CFR 98.186(b)(3)).
- The annual lime production capacity (reported under 40 CFR 98.196(b)(15)).
- The type of nitric acid process (reported under 40 CFR 98.226(k)).
- The maximum rated throughput capacity of the catalytic cracking unit, traditional fluid coking, or catalytic reforming unit (reported under 40 CFR 98.256(f)(3)).
- The maximum rated throughput of the sulfur recovery plant (reported under 40 CFR 98.256(h)(2)).
- The maximum rated throughput of each coke calcining unit (reported under 40 CFR 98.256(i)(2)).
- The annual phosphoric acid permitted production capacity (reported under 40 CFR 98.266(b)).
- The annual phosphoric acid production capacity for each wet-process phosphoric acid process line (reported under 40 CFR 98.266(f)(3)).
- The annual production capacity of silicon carbide reported by facilities using CEMS (reported under 40 CFR 98.286(a)(3)).
- The annual production capacity of silicon carbide reported by facilities not using CEMS (reported under 40 CFR 98.286(b)(3)).
- The annual production capacity of soda ash for each manufacturing line reported by facilities using CEMS (reported under 40 CFR 98.296(a)(3)).
- The annual production capacity of soda ash reported by facilities not using CEMS (reported under 40 CFR 98.296(b)(4)).
- The annual production capacity of titanium dioxide reported by facilities using CEMS (reported under 40 CFR 98.316(a)(4)).
- The annual production capacity of titanium dioxide for each production line reported by facilities not using CEMS (reported under 40 CFR 98.316(b)(5)).
- The description of the gas collection system at an underground coal mine (reported under 40 CFR 98.326(q)).
- The annual zinc product production capacity reported by facilities using CEMS (reported under 40 CFR 98.336(a)(1)).
- The annual zinc product production capacity reported by facilities not using CEMS (reported under 40 CFR 98.336(b)(2)).
- Description or diagram of the reporter's industrial wastewater treatment system reported by facilities subject to subpart II (reported under 40 CFR 98.356(a)).

For the reasons explained below, we have decided not to make a CBI determination for these data elements. Many of these data elements require facilities to report the maximum production capacity of the facility or process line. In the July 2010 CBI proposals, we proposed that capacity data would be not entitled to CBI protection because we believed capacity data to be readily available from other public sources (*e.g.,* permits, trade and

government publications). We received a number of comments that capacity data may not be readily available for all sources and claims that capacity information is competitively sensitive. EPA reviewed the available capacity information and determined that the situation may vary for individual facilities. While the capacity data elements listed above are generally publicly available, there may be facilities where this data is not public. Further, the information publicly available for facilities may not necessarily be the same as the data elements required under Part 98. We therefore decided not to make a confidentiality determination for the data elements on capacity listed above at this time.

Similarly, we decided not to make determinations for the type of nitric acid production process (reported under 40 CFR 98.226(k), description of the gas collection system at an underground coal mine (reported under 40 CFR 98.326(q)), and description of the wastewater treatment system (reported under 40 CFR 98.356(a)). We consider it unlikely that most reporters would consider the type of nitric acid production process, description of wastewater treatment facility or the gas collection system at an underground coal mine to be sensitive. However, we can envision reporters submitting more detailed information than anticipated that would provide specific details on the operation of their facility that would be considered sensitive. For example, 40 CFR 98.326(q) requires reporters to submit a description of the gas collection system at an underground coal mine. If reporters submitted detailed diagrams of their facilities these diagrams may contain information that is proprietary or sensitive or may provide insight into other production processes. EPA is also not aware of any public sources of these data. Therefore, although we believe it is unlikely that these data elements would cause competitive harm, EPA has decided not to make determinations for these data elements at this time.

Except for the data elements discussed above, we have determined that all other data elements in this data category are not CBI for the same reasons we set forth in Section II.C.7 of the July 7, 2010 CBI proposal (see 75 FR 39111). We disagree with commenters who recommended that the number of process lines or units be held confidential because their disclosure would be likely to cause competitive harm. This information is generally included in both construction and Title V operating permits as well as in permit applications and permit fact sheets and is therefore already publicly available. Permits include requirements or limits for each specific unit or process line. Because the number of production units is already publicly available, these data elements do not qualify for confidential treatment (see 40 CFR 2.208(c)).

7. Unit/Process Operating Characteristics Category That Are Not Inputs to Emission Equations

New Data Elements: EPA has added four new data elements to this data category (see Section II.B.1 of this preamble for a list of the new data elements). The new data elements are reported by municipal landfills that use an alternative methane correction factor instead of the default factor provided in 40 CFR part 98, subpart HH. The data elements consist of information on the operation of aeration systems at the landfill, such as the number of hours it was operated and the fraction of the landfill subject to aeration. These new data elements were added to subpart HH by the amendments published on October 28, 2010 (75 FR 66434) and were not included in the July 2010 CBI proposals. These data elements are the same type of data as other data elements included in this category in the July 2010 CBI proposals (*e.g.,* the type of cover material used and the surface area of the landfill (reported under 40 CFR 98.346(f)). Like these other data elements in this category, the four data elements at issue provide general information about the operation of a municipal landfill; such information does not reveal any trade secrets or other sensitive business information regarding the design or operation of an aeration system or the landfill. Further, this type of data on landfills is generally already publicly available from the municipalities operating landfills. We have therefore concluded that the release of this data will not cause substantial competitive harm to the reporter and are finalizing our determination that these data elements are non-CBI in this action.

Moved and Double-Listed Data Elements: In response to comments stating that CO_2 generated by a process is not actual emissions if a portion of the CO_2 is collected, EPA has added six data elements to this data category under certain conditions. Specifically, the data elements for reporting the total CO_2 generated by a process under three subparts are added to this category only for those facilities that collect a portion of the CO_2 for use on site or for shipment off site. We are including these data elements in the Unit/Process Operating Characteristics that are Not Used as Inputs to Emission Equations Data Category, because these data elements relate to operating characteristics of a production process that may vary over time. As with the other data elements in this category, they do not meet the definition of emission data at 40 CFR 2.301(a)(2)(i)(A). As discussed in more detail below in this subsection, we received comments that the proposed category-based non-CBI determination may not be appropriate for all the data elements assigned to this category and, in response, we reviewed individual data elements assigned to this data category to determine whether the proposed determination applies. For reporters who collect the generated CO_2 by a process, we determined that the data element on the amount of CO_2 is not CBI. Public availability of the data is not likely to cause substantial harm to the competitive position of the reporter because the data reported is the GHG generated by the industrial process and does not reveal any sensitive information on how much of the GHG generated was collected, how much of the collected GHG was used onsite (*e.g.,* for urea production or sugar refining), or how much was transferred off site. As described in Section II.A.4 of this preamble, EPA moved 37 data elements that were improperly placed in the Inputs to Emission Equations category in the July 2010 CBI proposals. EPA also double-listed[8] six data elements in both the Inputs to Emission Equations category and the Unit/Process Operating Characteristics that are Not Inputs to Emission Equations category. These 43 data elements share the same characteristics as those data elements previously assigned to the Unit/Process Operating Characteristics that are not Inputs to Emission Equations category in the July 2010 CBI proposals. Specifically, they consist of operating parameters that change over time that are not used as inputs to emission equations. For a list of the reassigned data elements, see the memorandum "Final Data Category Assignments and Confidentiality Determinations for Part 98 Reporting Elements" (see Docket EPA–HQ–OAR–2009–0924 and the Web site, *http://www.epa.gov/climatechange/emissions/ghgrulemaking.html*). As discussed in more detail below in this subsection, we received comments that the proposed category-based non-CBI determination may not be appropriate

[8] For those reporters who do not use the data elements in the specified equations in Section II.B.1 of this preamble, the data elements are in the Unit/Process Operating Characteristics that are Not Inputs to Emission Equations category.

for all the data elements assigned to this category and, in response, we reviewed individual data elements assigned to this data category to determine whether the proposed determination applies. Based on our review, we determined that 10 of the 43 data elements are entitled to confidential treatment. The 10 data elements determined to be CBI are as follows:

- Annual average value of the inlet air flow rate reported by refineries (40 CFR 98.256(f)(8)).
- Annual average value of oxygen-enriched air flow rate reported by refineries (40 CFR 98.256(f)(8)).
- Annual average value of $\%O_{oxy}$ reported by refineries (40 CFR 98.256(f)(8)).
- Annual average value of the inlet air flow rate reported by refineries (40 CFR 98.256(f)(9)).
- Annual average value of oxygen-enriched air flow rate reported by refineries (40 CFR 98.256(f)(9)).
- Annual average value of $\%N_{2,oxy}$ reported by refineries (40 CFR 98.256(f)(9)).
- Number of regeneration cycles or measurement periods during the reporting year for each catalytic cracking unit, traditional fluid coking unit, and catalytic reforming unit reported by refineries (40 CFR 98.256(f)(13).
- Average coke burn-off quantity per cycle or measurement period for each catalytic cracking unit, traditional fluid coking unit, and catalytic reforming unit reported by refineries (40 CFR 98.256(f)(13)).
- Annual volume of recycled tail gas (if not used to calculate the recycling correction factor) (reported under 40 CFR 98.256(h)(5)).
- Annual average mole fraction of carbon in the tail gas (if not used to calculate recycling correction factor) (reported under 40 CFR 98.256(h)(5)).

As with the other data elements in this category, none of these 10 data elements meet the definition of emission data at 40 CFR 2.301(a)(2)(i)(A) because they are not "* * * information necessary to determine the identity, amount, frequency, concentration, or other characteristics (to the extent related to air quality) of any emission which has been emitted by the source* * *" We also determined that public availability of these data would cause competitive harm to reporters for the following reasons. Information on the flow rates and composition of inputs to the catalytic cracking units (*i.e.,* 40 CFR 98.256(f)(8) and (f)(9)) provide insight into the operation of the production process that may reveal operating conditions that are considered sensitive by the reporter because they provide the reporter with a competitive advantage over other refineries. The average coke burn-off quantity per cycle/measurement period for individual catalytic cracking units, traditional fluid coking units, and catalytic reforming units (reported under 40 CFR 98.256(f)(13)) discloses information about the operation of the unit (*e.g.,* the level of reforming), and indicates the quantity of naphthalene the feedstock and the quantity of aromatics produced. The annual volume of tail gas recycled and the mole fraction of carbon in the tail gas (reported under 40 CFR 98.256(h)(5)) provide information about the refinery's ability to process different types of crude oil, and the products the refinery can produce. Further, comments from refineries indicate that they consider these data elements to be sensitive and take precautions to ensure this information is not made public. We are also not aware of any public sources for these data elements. For the reasons described above, we conclude that these data elements are CBI.

EPA decided not to make final confidentiality determinations for seven of the 43 data elements in this category. These data elements are as follows:

- Annual average value of the exhaust gas flow rate reported by refineries (40 CFR 98.256(f)(7)).
- Annual average value of $\%CO_2$ reported by refineries (40 CFR 98.256(f)(7)).
- Annual average value of %CO reported by refineries (40 CFR 98.256(f)(7)).
- Annual average value of $\%O_2$ reported by refineries (40 CFR 98.256(f)(8)).
- Annual average value of $\%CO_2$ reported by refineries (40 CFR 98.256(f)(8)).
- Annual average value of %CO reported by refineries (40 CFR 98.256(f)(8)).
- Annual average value of $\%N_2$ exhaust reported by refineries (reported under 40 CFR 98.256(f)(9)).

Based on our review of these data elements, we have concluded that the configuration of individual facilities would impact the confidentiality determinations for these data elements. Because we do not have the necessary information on the facility configuration, we are unable to make a confidentiality determination for these data elements. For example, under 40 CFR 98.256(f)(7) facilities report the exhaust flow rate and outlet concentrations of CO_2 and CO. In some cases, the exhaust gases from these units are exhausted directly to the atmosphere. In such cases, the flow rate and CO_2 and CO content of the exhaust gases meet the definition of emission data at 40 CFR 2.301(a)(2)(i)(A) because they are "* * * information necessary to determine the identity, amount, frequency, concentration, or other characteristics (to the extent related to air quality) of any emission which has been emitted by the source* * *" and therefore precluded from confidential treatment pursuant to CAA section 114(c). However, other reporters do not exhaust these gases directly to the atmosphere but instead route them to other units (*e.g.,* other combustion units). For these facilities, the flow rate and concentrations of CO_2 and CO reported under 40 CFR 98.256(f)(7) would not be precluded from CBI treatment because the data elements would not meet the definition of emission data since they do not provide information on the type and characteristics of pollutants emitted to the atmosphere. Because we do not have information on site-specific conditions that impact the status of these data elements, we have decided not to make determinations for these 7 data elements in this action.

With respect to the remaining 26 data elements moved to the data category from Inputs to Emissions Equations, for the reasons discussed in more detail in Section II.C.7 of the July 7, 2010 CBI proposal (see 75 FR 39111), EPA has concluded the disclosure of these data elements is unlikely to cause competitive harm. These data elements do not provide insight into current production rates, raw material consumption, or other information that competitors could use to discern market share and other sensitive information. They consist of data elements such as the amount and carbon content of gases sent to flares at refineries and the dates on which ventilation/degasification occurs at underground coal mines, which are not considered to be sensitive information.

Comment: The data elements in this data category consist of operating characteristics related to production processes. Unlike the Unit/Process Static Characteristics that are Not Inputs to Emission Equations category discussed Section II.B.6 of this preamble, these data elements change with changes in operations or processes. Some commenters agreed with EPA's proposed determination that the data in this category would not qualify for confidential treatment under CAA section 114(c) because it was general information that was not likely to cause competitive harm to reporters. However, several commenters expressed concern

that competitors could use some data elements in this category, in combination with other data, to discern information about individual facilities and processes, causing competitive harm. Some commenters noted that many of the data elements in this category are not already available to the public, supporting the assertion that they would cause competitive harm if disclosed. For example, one commenter noted that the number of operating kilns reported by a cement manufacturing facility (reported under 40 CFR 98.86(a)(3) and 98.86(b)(4)) was not information already available to the public. This commenter stated that the number of operating kilns could be used by competitors to determine the amount of product produced, estimate market share, and pricing structures. The commenter believes that this information could put the reporter at a competitive disadvantage. Other commenters recommended that the quality assurance/quality control data, collected by facilities to verify data provided by raw material suppliers, should be held confidential because competitors could use these data to determine product composition and process design or operating characteristics that reporters consider proprietary. One commenter stated that certain information submitted as part of BAMM extension requests was sensitive information requiring confidential treatment. This commenter specifically identified the following data elements from BAMM extension requests as confidential: the reason for the extension request (40 CFR 98.3(d)(2)(ii)(C)) and the planned installation date of monitoring equipment (40 CFR 98.3(d)(2)(ii)(F)). The commenter noted that this information could be used by competitors to determine a company's ability to capitalize on specific market opportunities and would allow competitors to target markets based on weaknesses and vulnerabilities. The commenter further stated that information on future shutdowns would allow competitors to increase production during a reporter's shutdown and would likely cause serious harm to the reporter's competitive position.

Other commenters recommended EPA allow reporters to make individual case-by-case CBI claims for data elements in this data category.

Response: The comments raised a concern that the proposed non-CBI determination may not be appropriate for certain data elements in this category. Note that EPA did not receive comments specific to the data elements in this category objecting to our proposed determination that the data elements in this category do meet the definition of emission data because none of the data elements are inputs to equations/calculation methods or information otherwise needed to calculate or determine emissions. We therefore conclude that the proposed determination was appropriate in this regard and finalize in this action our determination that the data elements in this category are not emission data under 40 CFR 2.301(a)(2)(i).

In response to the comments that a non-CBI determination for this category was not appropriate, EPA decided to re-evaluate each data element assigned to this data category to determine whether the proposed determination applies. As part of this process, EPA reviewed public comments regarding specific data elements, conducted additional reviews of alternative public data sources (*e.g.,* Title V permits, NEI databases) and re-evaluated whether each data element would be likely to cause harm to a reporter's competitive position. Through this process, we have determined that ten data elements in the Unit/Process Operating Characteristics that are Not Inputs to Emission Equations category are CBI. These data elements include the following:

- The reason for submitting a BAMM extension request (reported under 40 CFR 983(d)(ii)(C)).
- The reason why equipment was not or could not be obtained and installed during a planned shutdown between October 30, 2009 and April 1, 2010 as reported in a BAMM extension request (reported under 40 CFR 98.3(d)(2)(ii)(E)).
- Planned installation date for monitoring equipment as reported in a BAMM extension request (reported under 40 CFR 98.3(d)(2)(ii)(F)).
- The anticipated date on which a facility applying for a BAMM extension will begin using the monitoring methods specified in Part 98 (reported under 40 CFR 98.3(d)(2)(ii)(F)).
- The sampling analysis results of carbon content of feedstock as determined from QA/QC supplier data under 40 CFR 98.74(e) by ammonia manufacturing facilities (reported under 40 CFR 98.76(b)(6)).
- The mass fraction of each sample analyzed for all tests used to verify (*i.e.,* QA/QC) the carbonate-based mineral mass fraction for each carbonate-based raw material charged to a continuous glass melting furnace (reported under 40 CFR 98.146(b)(5)(iii)).
- The explanation of change greater than 30 percent in a magnesium production facility's cover gas usage rate (reported under 40 CFR 98.206(g)).
- The types of materials loaded by vessel type that have an equilibrium vapor phase concentration of CH_4 of 0.5 volume per cent or greater (reported under 40 CFR 98.256(p)(2)).
- The sampling analysis results for carbon content of petroleum coke consumed by a silicon carbide production facility as determined for QA/QC of data provided by raw material suppliers (reported under 40 CFR 98.286(b)(7)).
- The sampling analysis results of carbon content of petroleum coke consumed by titanium dioxide production facilities for QA/QC of data provided by raw material suppliers (reported under 40 CFR 316(b)(13)).

EPA has learned that these data elements are not publicly available information, and they consist of proprietary information about a process, method of operation, composition of raw materials or products that are commonly considered CBI.

EPA agrees with commenters who recommended that certain data elements submitted as part of BAMM extension requests are eligible for confidential treatment. At the time of the CBI proposals, we believed the reason for requesting a BAMM extension (reported under 40 CFR 98.3(d)(2)(ii)(C)) and the reason why equipment was not (or could not be) installed (reported under 40 CFR 98.3(d)(2)(ii)(E)) would be generic information that would not reveal any sensitive operating information. However, since that time EPA has reviewed a number of BAMM extension requests and determined that they contain more detailed information, such as process diagrams and operational information, than we had previously anticipated. We also note that many facilities have claimed these data as CBI in their BAMM extension requests because they provide insight into facility-specific operating conditions or process design that are not available from other sources and would harm their competitive position if released. We also agree with those commenters who stated that the planned installation date and the date of anticipated startup (reported under 40 CFR 98.3(d)(2)(ii)(F)) provides sensitive information regarding future process shutdowns. These data elements likely would cause competitive harm if disclosed because competitors could use this information to anticipate and potentially benefit from future decreases in product supply. For example, a competitor able to anticipate the shutdown of a reporter's facility and resulting decrease in product supply,

could use this information to steal customers from a reporters by increasing its own production or could adjust the price of their own products.

We also agree that the results of sampling and analysis data used to quality assurance/quality control data on the composition of raw materials would be likely to cause competitive harm to reporters and is not available from other sources. Competitors could use the composition of raw materials to identify a firm's raw material supplier and estimate production costs. In the case of glass manufacturing facilities, the data would also reveal proprietary information about product formulation or recipe. Since this information is not available from other sources and may be used by competitors to devise competitive strategies that would likely harm the competitive position of the reporter, EPA has determined that these data are eligible for confidential treatment.

We have also determined that the data element reported by petroleum refineries under subpart Y related to the types of materials loaded that have an equilibrium vapor phase concentration of CH_4 of 0.5 volume percent or greater (40 CFR 98.256(p)(2)) are entitled to confidential treatment. EPA has learned that this data is only released in aggregate form by EIA. This data could be used by competitors in combination with other information to discern the approximate quantities of materials used in loading operations. Information of this type would provide competitors insight into the shipping activities conducted at refineries.

Except for the data elements listed above, we conclude for the reasons set forth below and in Section II.C.7 of the July 7, 2010 CBI proposal that the proposed non-CBI determination is appropriate for all other data elements belonging to this data category and are finalizing these determinations in this action. We disagree with commenters who recommended that the number of units operated during a reporting year should be held confidential. This information cannot be used to determine production data for a facility and would not provide insight into a facility's design or operating procedures. It is also unlikely to reveal any information regarding future production that would be useful to competitors or allow competitors to anticipate future shutdowns. EPA therefore continues to conclude that public availability of these data elements would not cause competitive harm to the reporter.

8. Test and Calibration Methods Category

Moved Data Elements: EPA determined that the following seven data elements were incorrectly assigned to the Methods and Methodological Tier category:

- The basis for the unit-specific factor (*i.e.,* select from average of multiple source tests; Single source test within last 5 years; Single source test more than 5 years ago; Source test of identical unit at same facility) (40 CFR 98.256(i)(8)).
- The basis for the CO_2 emission factor used in Equation Y–16b (40 CFR 98.256(j)(8)).
- The basis for the carbon emission factor used in Equation Y–16b (40 CFR 98.256(j)(8)).
- Indication of the measurement or estimation method used for measuring volumetric flow discharge for each process vent (40 CFR 98.256(l)(5)).
- Indication of the measurement or estimation method used for measuring average mole fraction of each GHG for each process vent (40 CFR 98.256(l)(5)).
- The basis for the CH_4 emission factor used (*i.e.,* select from weekly or more often measurements; Periodic (less frequent than weekly) measurements; average of multiple source tests; One-time source test; Default factor) for uncontrolled blowdown systems (40 CFR 98.256(m)(3)).
- Basis for the mole fraction of CH_4 in the vent gas from the unstabilized crude oil storage tank (*i.e.,* measurement of methane composition; engineering estimate of methane composition based on crude composition; default) for storage tanks that process unstabilized crude oil (40 CFR 98.256(o)(4)(vi)).

EPA has also determined that the following two data elements were incorrectly assigned to the Inputs to Emission Equations category:

- Date of measurement of the volumetric flow rate for each ventilation monitoring point (40 CFR 98.326(f)).
- Date of measurement of methane concentration for each ventilation monitoring point (40 CFR 98.326(g)).

These nine data elements provide information on how specific parameters or emission factors were determined (*e.g.,* weekly measurements versus daily measurements, direct measurement versus engineering estimates) or the dates on which measurements were made. They are not used to calculate emissions or to determine the calculation method used to calculate the GHG emissions. Therefore, we have assigned these data elements to the Test and Calibration methods category, which contains similar data elements. For example, 40 CFR 98.256(i)(8) is similar to 40 CFR 98.256(e)(10), which requires refineries to report the basis for the value of the fraction of carbon in the flare gas contributed to methane by selecting from the following list: Daily or more often measurements; weekly measurements; periodic (less frequent than weekly) measurements; One-time measurement; engineering estimate; default (0.4); and other. Since these data elements are similar in type to the data elements included in this category, we have concluded that the non-CBI determination applied to the Test and Calibration Methods category also applies to these data elements.

Comment: This data category includes information on calibration methods used to calibrate monitoring instruments, the frequency of sampling and analysis, methods used in performance tests, and methods used for analyzing the compositions of materials. Few commenters submitted comments on this data category. Many of those commenters agreed with EPA's proposed determination that disclosure of the data elements in this category would not cause competitive harm to reporters. One commenter noted that the type of test methods and other data elements included in this data category are generally already specified in the GHG Reporting Rule. This commenter asserted that data elements confirming that the correct monitoring methods or calibration procedures were used are generally not the type of data considered competitively sensitive by reporters.

A few commenters disagreed with EPA's proposed determination for this data category. One commenter thought that the description of the BAMM used (reported under 40 CFR 98.3(c)(7)) should be held as confidential information, but did not provide any explanation or rationale for why this data element would be likely to cause substantial harm to their competitive position. One commenter indicated that the method used to measure the frequency and duration of anode effects or overvoltage (reported under 40 CFR 98.66(d)) should be considered confidential. This commenter stated that information about the method used to measure these parameters could be used in combination with other reported data to estimate other parameters that would cause competitive harm (*e.g.,* aluminum production). This commenter also identified the date on which tests were completed to determine emissions factors (reported under 40 CFR 98.66(c)(3)) as confidential, but did not provide any rationale for why this data element would cause competitive harm.

Response: Although some commenters disagreed with our proposed determination for this category, only one provided rationale supporting that claim. However, for the reasons explained below, we disagree with the commenter that the method used to measure parameters, such as the frequency and duration of anode effects or overvoltage (reported under 40 CFR 98.66(d)), could be used to derive other sensitive information that would cause competitive harm. As previously described in Section II.C.9 in the proposal preamble (75 FR 39094, July 7, 2010), the data elements in this category, including those noted in the comments, consist of descriptions of devices or methods used to measure a parameter, the method and frequency of calibrating measurement devices, and the frequency and analytical methods used for conducting performance tests or sample analysis. The type of device used to make the measurement (*e.g.,* flow meter, weighing scales) and the frequency and method of calibrating the measuring device do not reveal the actual values of the measured parameters or provide any other sensitive information about the design or operating characteristics of a process. The standardized analytical method and the frequency of sample collection and analysis are generally specified by each subpart and do not provide any insight into the design or operating conditions of a facility. For the reasons stated above and in Section II.C.9 in the proposal preamble (75 FR 39094, July 7, 2010), we conclude that our proposed non-CBI determination for this data category is appropriate.

9. Production/Throughput Data Elements That Are Not Inputs to Emission Equations and Raw Materials Consumed That Are Not Inputs to Emission Equations Categories

Moved and Double-Listed Data Elements: After reviewing industry comments related to the capture of process emissions for use on site, EPA determined that the data element required to be reported by 40 CFR 98.196(b)(17)(i) was incorrectly assigned to the Unit/Process Operating Characteristics That Are Not Used as Inputs to Emission Equations Data Category. EPA has determined that this data element, which requires lime manufacturers to report the amount of CO_2 captured for use in on-site processes, is information about materials used in a production process. Such information relates to production (such as the actual production rate) and not unit/process operating characteristics. Therefore, we have assigned this data element to the Production/Throughput Data That Are Not Inputs to Emissions Equations Data Category (which contains similar data elements (*e.g.,* 40 CFR 98.76(b)(13) requiring ammonia facilities to report the amount of CO_2 from the ammonia production process used to produce urea) and have concluded that the CBI determination applied to that category also applies to this data element.

EPA has moved three data elements from the Inputs to Emission Equations category to the Production/Throughput Data That Are Not Inputs to Emission Equations and double-listed [9] two data elements in these two categories.[10] Each of these five data elements requires the reporting of either the quantity or composition of a product, which are the same type of data assigned to this category. For example, the annual quantity of petrochemicals produced (40 CFR 98.246(a)(5)), volume or mass of off-specification product produced (40 CFR 98.246(a)(9)), and monthly production of titanium dioxide (40 CFR 98.316(b)(8)) are the same type of data as 40 CFR 296(b)(6) (monthly production of soda ash) and 40 CFR 98.316(b)(5) (annual production of titanium dioxide). The cumulative volumetric biogas flow and the weekly average CH_4 concentration for each week that biogas is collected for destruction reported by wastewater treatment facilities using daily sampling ((40 CFR 98.356(d)(2) and (d)(3)) are also the same as the other data elements listed in this category because they can be used to determined the average weekly biogas production for the wastewater treatment facility. Because these five data elements are the same type of data as the other data elements in this category, we have concluded that the CBI determination applied to that category also applies to this data element.

Comment: Many commenters supported EPA's proposed determination that the data in these two data categories (none of which are inputs to equations/calculation methods or information otherwise needed to calculate or determine emissions) qualify for confidential treatment. The commenters agreed that the data elements in these data categories should be kept confidential because disclosure of these data would cause substantial harm to the competitive position of reporters. They argue that disclosure of these data could provide competitors with insight into a facility's operational strengths and weaknesses as well as revealing information about raw material sources. Some commenters argued that the data are currently held as CBI under other Federal programs that collect these data. Others agreed with EPA's proposal that the data elements in these data categories do not meet the definition of emission data (40 CFR 2.301(a)(2)(i)).

Several commenters identified specific data elements from these data categories as confidential and provided information describing why they considered the data sensitive. For example, commenters stated that data elements that provide the chemical composition of products could be used by competitors to deduce the types of feedstock or raw materials used in the process. Other commenters stated that data on the quantities of product and by-products produced and raw materials consumed should be kept confidential because this information can be used by competitors to determine production costs, process efficiency, and market share.

Although most commenters agreed with EPA's proposed determinations for these two data categories, a few commenters believe that EPA should make data in these categories available to the public. Some commenters recommended that EPA disclose the data in these data categories because it would promote confidence in the data and would be consistent with the CAA. They stated that these data elements are verification data that are necessary to ensure the reported emissions are accurate. They argued that since the data elements may be used to verify the GHG emissions, they meet the definition of emission data in 40 CFR 2.301(a)(2)(i). They further argued that these data elements are especially important where facilities use indirect measurement methods (*e.g.,* emission factors) to estimate emissions. Another commenter stated that EPA should publish production throughput and raw material consumption data because this information is essential for making comparisons between facilities. This commenter argued that the data in these data categories should be made public because, without this information, the public would not be able to determine the amount of GHGs per unit of production, which is useful for assessing and comparing the carbon efficiency of a facility.

Response: We disagree with those commenters who argued that, because the data in these categories are used to verify the reported GHG emissions, these data meet the definition of

[9] For those reporters who do not use the data elements in the equations specified in Section II.B.1, the data elements are in the Production/Throughput Data That Are Not Inputs to Emission Equations.

emission data in 40 CFR 2.301(a)(2)(i). As we described in the July 7, 2010 CBI proposal, none of the data elements in these data categories are used by reporters to calculate GHG emissions under Part 98. Although the data may be used to verify the accuracy of the reported emissions, we do not consider them "necessary to determine" the amount of GHG emissions under Part 98 because emissions are in fact calculated without these data elements. Therefore, these data elements do not meet the definition of emission data in 40 CFR 2.301(a)(2). We agree that these data elements are useful for making comparisons between industries and individual facilities and could be useful to industry, non-government organizations (NGOs), public, and other stakeholders when assessing any regulatory program. However, CAA section 114(c) requires that EPA afford confidential treatment to CBI (except for emission data). These commenters did not claim or provide any information indicating that data elements in these categories are not CBI. Further, many other commenters provided information explaining how the release of data in this category might provide insight into production rates, methods, and efficiencies causing harm to the competitive position of reporters. We therefore conclude that our proposed CBI determinations for these two data categories are appropriate and finalize these CBI determinations in this action.

10. Process-Specific and Vendor Data Submitted in BAMM Extension Requests Category

Comment: Only a few commenters submitted comments on this data category. The majority of those commenters agreed with EPA's proposed determination that disclosure of these data would substantially harm the competitive position of reporters and that therefore the data in this category qualify for confidential treatment. A few commenters provided very general statements that disclosure of these data would be consistent with CAA and the Greenhouse Gas Reporting Program (GHGRP). We have also received comments generally claiming that all or most Part 98 data elements should be made available to the public. However, these commenters did not provide any specific rationale for that position.

Response: Although some commenters disagreed with our proposed determination that data in this category qualify as CBI, none provided any rationale or information for us to evaluate whether our proposed determination is not appropriate for any data elements in this data category. The commenters did not explain how the data in this category meet the definition of emission data, provide alternative public sources demonstrating that the data is already publicly available, or provide information demonstrating how disclosure of the data elements in this category would not cause competitive harm. Furthermore, most comments on this data category confirm that disclosure of the data elements in this category could divulge sensitive information about specific processes used by the facility or vendor information, and the disclosure of this information is likely to cause substantial harm to reporters. In light of the above, we conclude that our proposed CBI determination for this data category is appropriate and finalize that determination in this action.

C. Suppliers

1. Major Changes to Determinations for Supplier Data Elements Since Proposal

We are finalizing our category assignments of the data elements in the supplier subparts specified in Section I.C. of this preamble for the 11 supplier data categories and our confidentiality determinations for these 11 supplier data categories, including the individual determinations for certain data elements in the following categories: GHGs Reported, Production/Throughput Quantities and Composition, and Unit/Process Operating Characteristics. Major changes to the determinations for the supplier data elements since our CBI proposals include:

- Although we had proposed that the total CO_2 supplied as reported under subpart PP would be non-CBI, we have determined in this final action that this information is CBI for industrial CO_2 production facilities (*e.g.,* ammonia production facilities that collect CO_2 for transfer off site), is non-CBI for CO_2 production wells, and is CBI for importers and exporters for the reasons specified in Section II.C.3 of this preamble.
- In this final action, we have added the following new data element to the GHGs Reported category: the total annual CO_2 mass supplied in metric tons as calculated using Equation PP–3b (40 CFR 98.426(c)(2)(iii)). We have determined that this data element is CBI when reported by industrial production facilities, and is non-CBI when reported by CO_2 production wells for the reasons specified in Section II.C.3 of this preamble.
- Although we had proposed a non-CBI status for the following data elements in the GHGs Reported data category, we have determined in this final action that they qualify as CBI under the following conditions for the reasons specified in Section II.C.3 of this preamble. These data elements are as follows:
  —The total combined supplier level CO_2e (40 CFR 98.3(c)(5)(i)) is CBI if the reporter produces, imports, exports or otherwise supplies just one product and if EPA has determined that the amount of that one product produced, imported, exported or otherwise supplied is CBI.
  —The quantity of each GHG (40 CFR 98.3(c)(5)(ii)) is CBI if the reporter produces, imports, exports, or otherwise supplies just one product and if EPA has determined that the amount of that one product produced, imported, exported or otherwise supplied is CBI.
- EPA has decided not to make final confidentiality determinations for data elements reported by importers of Coal-Based Liquids and Petroleum Products (subparts LL and MM) describing the amount and type of materials imported. These data elements are described in the GHGs Reported and Production/Throughput data categories. For additional information, see Sections II.C.3 and II.C.4 of this preamble.
- In this final action, we have added the following two new data elements to the Production/Throughput Quantities and Composition data category. We have also determined, as explained in Section II.C.4 of this preamble, that these data elements are CBI when reported by industrial production facilities, and non-CBI when reported by CO_2 production wells. The data elements are as follows:
  —The total annual CO_2 mass through main flow meter(s) in metric tons (40 CFR 98.426(c)(2)(i)).
  —The total annual CO_2 mass through subsequent flow meter(s) in metric tons (40 CFR 98.426(c)(2)(ii)).
- Although we had proposed a non-CBI status for the following data elements in the Production/Throughput data category, we have determined in this final action that they qualify as CBI for the reasons specified in Section II.C.4 of this preamble. These data elements are as follows:
  —Facility-level and meter-level CO_2 supply data reported by industrial CO_2 production facilities under subpart PP.
  —The amount of CO_2 supplied to each of 13 types of end-users reported under subpart PP.
- Although we had proposed a non-CBI status for the following data elements in the Unit/Process Operating

Characteristics data category, we have determined in this final action that they qualify as CBI for the reasons specified in Section II.C.6 of this preamble. These data elements are as follows:

—The dates on which fluorinated GHGs are imported and/or exported reported under subpart OO (40 CFR 98.416(c)(3) and (d)(5)).
—The port of entry or export reported under subpart OO (40 CFR 98.416(c)(4) and (d)(5)).
—The reason for submitting a BAMM extension request and reason why monitoring equipment was not installed by the required deadline reported under subpart A (40 CFR 98.3(d)(2)(ii)(C)) and 98.3(d)(2)(ii)(E)).
—The dates of planned installation and anticipated compliance with monitoring requirements submitted in BAMM extension requests reported under subpart A (40 CFR 98.3(d)(2)(ii)(F)).

• In this final action, we have added the following new data element to the Unit/Process Operating Characteristics data category: Location of each flow meter in relation to the point of segregation (40 CFR 98.426(c)(2)(iv)). We have also determined that this data element is not CBI for the reasons specified in Section II.C.6 of this preamble.

• In this final action, we have added the following seven new data elements to the Amount and Composition of Materials Received data category. We have also determined that these data elements are CBI for the reasons specified in Section II.C.10 of this preamble. The data elements are as follows:

—EIA crude stream code (40 CFR 98.396(a)(20)(v)).
—Crude stream name (40 CFR 98.396(a)(20)(v)).
—Generic name for crude stream (40 CFR 98.396(a)(20)(vi)).
—EIA two-letter country or state production area code for batch (40 CFR 98.396(a)(20)(vi)).
—Volume of crude oil in barrels injected into a crude oil supply or reservoir (40 CFR 98.396(a)(22)).
—Report the next most appropriate tier of the batch definition for reporting batch information under 40 CFR 98.396(a)(20) (40 CFR 98.396(a)(23)).
—Indication of whether the material is a blended non-crude feedstock or blended product (40 CFR 98.396(d)(1)(iii).

The rationales for these changes can be found below in Sections II.C.2 through C.13 of this preamble and in the "Proposed Confidentiality Determinations and Data Handling Procedures for Part 98 Data: Responses to Public Comments" (available in the Docket EPA–HQ–OAR–2009–0924 and on the Web site *http://www.epa.gov/climatechange/emissions/ghgrulemaking.html*).

A final list of all the data elements in each supplier data category, by subpart, is provided in a memorandum (see Memorandum "Final Data Category Assignments and Confidentiality Determinations for Part 98 Reporting Elements" in Docket EPA–HQ–OAR–2009–0924 and on the Web site (*http://www.epa.gov/climatechange/emissions/ghgrulemaking.html*).

2. General Comments on the Supplier Data Categories

Comment: Most commenters agreed with our proposed determination that none of the supplier data categories meet the definition of emission data in 40 CFR 2.301(a)(2)(i). Some commenters agreed with our proposal, but argued that all data that are not emission data should be kept confidential.

Two commenters disagreed with EPA's proposal that none of the supplier data categories meet the definition of emission data. These commenters stated that the fuels and other products reported by suppliers are eventually emitted and that the suppliers are thus the ultimate source of those emissions. They further argued that if "* * * EPA seeks to measure emissions from entities which use supplied fuels or gases, it may measure emissions from these "source[s] of emissions" by seeking data from suppliers."[11]

Response: EPA disagrees with those commenters who stated that the definition of emission data includes supplier data. As explained in the July 7, 2010 CBI proposal, 40 CFR 2.301(a)(2)(i) defines emission data to refer to emissions emitted or authorized to be emitted by a reporting facility. The data reported under the supplier subparts pertains to certain products that would result in GHG emissions if released, combusted, or oxidized by the downstream user of these products. EPA agrees that it may use the data reported under the supplier subparts to calculate the GHG emissions that would result from the use or combustion of the products supplied by these reporters. Nevertheless, the data reported under the supplier subparts does not include information on the actual emissions that occur at supplier facilities. Therefore, in this action, we finalize our determination that the supplier data elements do not meet the definition of emission data as that term is defined in 40 CFR 2.301(a)(2)(i).

We also disagree with those commenters who stated that all supplier data should be held as confidential because the supplier data does not meet the definition of emission data. Under the Freedom of Information Act and the CAA section 114(c), EPA is required to disclose information that does not qualify for confidential treatment. In the July 2010 CBI proposals, EPA proposed to determine, either by category or data element, that certain supplier data elements are CBI while others are non-CBI. The CBI proposals provided detailed rationales for EPA's proposed determinations. Most commenters did not provide information that a specific determination or supporting rationale was flawed or otherwise inappropriate. For those that did raise supplier-specific issues, we addressed those comments in the relevant sections of this preamble (see Section II.C.3 through II.C.13 of this preamble for comments on the supplier data categories).

3. GHGs Reported Category

New Data Elements: EPA has added one new data element to this data category. This data element requires production facilities subject to subpart PP to report the total annual CO_2 mass supplied in metric tons as calculated using Equation PP–3b (40 CFR 98.426(c)(2)(iii)). This new data element was added to subpart PP by the amendments published on December 17, 2010 (75 FR 79092) and was not included in the July 2010 CBI proposals. This data element is identical to other data elements already assigned to this data category (*e.g.,* the annual mass of CO_2 from all flow meters and CO_2 streams that deliver CO_2 to containers (40 CFR 98.426(c)(1)). Consistent with the determination made for other CO_2 supply data elements reported under subpart PP, EPA has determined that this new data element is eligible for confidential treatment when reported by industrial CO_2 production facilities, but not entitled to confidential treatment when reported by CO_2 production wells. As explained below in the response to comments on this data category, although CO_2 supply data is generally available for CO_2 production wells, we have found no public sources of such data for industrial CO_2 production facilities. Furthermore, some commenters stated that CO_2 supply data for industrial CO_2 production facilities would be likely to cause competitive harm if disclosed to the public because information documenting the amount of

[11] See letter to the U.S. EPA Administrator from the Clean Air Task Force, Natural Resources Defense Council, and Sierra Club, submitted August 26, 2010 (EPA–HQ–OAR–2009–0924–0018.1).

CO_2 collected and transferred off site would provide competitors with sensitive information that may be used to determine a reporter's market share and to gain insight into a reporter's ability to meet increases in market demand. The final determinations for this data category are summarized in Table 4 of this preamble.

Comment on Suppliers of CO_2 (Subpart PP): Some commenters believe that the amount of CO_2 collected at facilities for transfer off site (reported under subpart PP) should be held confidential for industrial production facilities such as ammonia manufacturing plants. These commenters stated that this information does not meet the definition of emission data; is not already publicly available; and can be combined with other information, such as emissions data reported for the associated combustion units, to estimate plant performance, which would cause competitive harm. We also received comments that the amount of CO_2 imported or exported (also reported under subpart PP) does not meet the definition of emission data, is not already publicly, and should be protected as CBI as the release of this data could cause competitive harm.

Response: We agree with commenters who recommended that the data elements describing the amount of CO_2 supplied reported by industrial facilities (*e.g.,* ammonia and lime manufacturing plants) and by importers and exporters under subpart PP are CBI. We agree that, for suppliers, the amount of CO_2 collected by production facilities and transferred off site and the amount of CO_2 imported or exported does not meet the definition of emission data in 40 CFR 2.301(a)(2)(i), because the CO_2 is not emitted at the reporter's facility. We previously proposed that this data element would be non-CBI for all CO_2 suppliers because we had identified sources of CO_2 supply data. However, we have since determined that although facility-level CO_2 supply data is generally available for CO_2 production wells, such data for industrial CO_2 production facilities is not publicly available. Likewise, the amount of CO_2 supplied is generally not available for importers and exporters. We therefore agree with the commenters that the amount of CO_2 collected by production facilities and transferred off site and the amount of CO_2 imported/exported are not already available to the public. Based on the information provided by the commenters, we also agree that for industrial sources and for importers/exporters the information would be likely to cause competitive harm. For industrial sources, we agree with commenters who argued that the availability of information documenting the amount of CO_2 collected and transferred off site would provide competitors with sensitive information that may be used to determine a reporter's market share and to gain insight into a reporter's ability to meet increases in market demand. For CO_2 importers and exporters, the data would provide competitors with information on market share, which could be used to devise marketing strategies that undermine or weaken a competitor's position. For the reasons stated above, we have determined the total CO_2 supplied as reported under subpart PP would be CBI when reported by industrial CO_2 production facilities (*e.g.,* ammonia production facilities that collect CO_2 for transfer off site), non-CBI when reported by CO_2 production wells, and CBI when reported by importers and exporters.

Comment on Suppliers of Coal-Based Liquid Fuels (Subpart LL) and Suppliers of Petroleum Products (Subpart MM): Some commenters recommended that total facility-level CO_2 and total importer level CO_2 from subparts LL and MM should be eligible for confidential treatment. EPA had proposed that importer data for subparts LL and MM would not be eligible for confidential treatment because importer data is already publicly available from the U.S. Energy Information Administration (EIA). One commenter disagreed with EPA and stated that data reported by importers under subparts LL and MM is not publicly available through EIA. This commenter stated that EPA's definitions of petroleum products and miscellaneous products differ from those used by the EIA and that these differences in reporting requirements would result in some supplier data being available to the public for the first time. Another commenter recommended that the amount of CO_2 reported, quantities of product, and other information for imported products be held confidential. This commenter agreed that imports are routinely reported to EIA, but stated that the company that reports the data to the EIA may be a company that is under contract with the end-user (*e.g.,* a broker relationship). As a result, the importer under Part 98 and the importer under EIA could be different entities. The commenter argued that, in these circumstances, the amount and composition of material imported by the part98 reporter would not already be publicly available.

Response: EPA has reviewed the comments on the proposed determinations for data elements reported by importers of coal-based liquids and petroleum products under subparts LL and MM (40 CFR 98.386(b)(7) and (b)(8); and 40 CFR 98.396(b)(7) and (b)(8)). We previously proposed a non-CBI status for these data elements because we believed the data elements were available to the public through EIA. Although we recognized that there are some differences in the products reported under Part 98 and EIA reporting program, we previously considered the differences to be minor and unlikely to reveal sensitive information. However, we agree with the commenter that EPA's definitions of petroleum products and miscellaneous products differ from those used by the EIA and that in some instances these differences may reveal information about the characteristics of an imported product that is not available through EIA. We also agree that this information would cause competitive harm in some situations (*e.g.,* where the importer uses the imported product as a raw material for their manufacturing process, the amount and characteristics of the raw material provide competitors with sensitive information on the manufacturing process, production costs, and efficiencies). However, we also note that the extent to which these Part 98 data elements reveal competitively harmful information would depend on the type of product imported because some of the Part 98 product definitions are identical to or sufficiently similar to those used by EIA (*e.g.,* the Part 98 definition of ethane is identical to that of EIA). We were not aware at the time of the proposal that some importers subject to Part 98 are not required to report their imports to the EIA and that the data is instead reported by brokers and published by EIA using the brokerage's name rather than the name of the company who ultimately instigated and received the imported products. Therefore, EPA agrees with the commenters that, in some limited cases, different entities may be required to report import data under 40 CFR part 98, subparts LL and MM and under the EIA reporting program. In such instances, we agree that the EIA data does not reveal the identity of the company reporting import data under Part 98 and therefore, we conclude that in these limited situations the data is not publicly available because it cannot be associated with Part 98 reporter. Since the circumstances vary for each reporter with regard to whether the data reported under Part 98 is available through EIA, EPA has decided not to make a confidentiality determination at this

time that would apply to all importers of coal-based liquids and petroleum products. Therefore, EPA is not finalizing confidentiality determinations in this action for data on the amount of CO_2 supplied reported by importers of Coal-Based Liquids and Petroleum Products (40 CFR 98.386(b)(7) and (b)(8); and 40 CFR 98.396(b)(7) and (b)(8)).

Comment on Facility-level CO_2e: Most commenters agreed with EPA's proposal that the total combined supplier-level CO_2e for subparts LL through PP and the total amount of GHGs reported for the specific subpart should be publicly available, while CO_2e reported for individual products under subparts LL through OO should be held confidential unless the data is already publicly available. However, some commenters were concerned that the combined supplier-level CO_2e reported for subparts LL through PP could provide information on the amount of product produced where the reporters produce only one product. Similarly, some commenters recommended that the importer/exporter-level CO_2e for subparts LL through PP should be held confidential for reporters who import and/or export only one product. These commenters stated that the actual pounds or tons of the specific product produced, imported, or exported could be easily discerned from the reported CO_2e data. Several commenters stated that competitors could use these data to gain insight into marketing strengths and weaknesses and thereby gain a competitive advantage over reporting entities. Some commenters noted that to be consistent with the proposal to treat product-specific production throughput in the Production/Throughput Quantities and Composition Category as CBI, EPA should also determine that supplier-level CO_2e data are CBI for facilities and importers/exporters with a single product. Some commenters recommended that the supplier-level CO_2e data be held as confidential in cases in which a reporter produces or imports/exports only a few products or in which facilities produce large amounts of one product and smaller amounts of other products.

Response: Although there are likely to be very few reporters that supply only one product, EPA agrees with commenters that the total combined supplier-level CO_2e for subparts LL through PP and the total quantity of each GHG supplied qualify as CBI if the reporter supplies only one of the products listed in subparts LL through PP and if EPA determined that the production, import, export or supply rate for that product is CBI (see Table 4 of this preamble for the list of production/throughput data elements determined to be CBI and Section II.D.3 of the July 7, 2010 CBI preamble for the rationale). In such instances, we agree with the commenters that the supplier level CO_2e information may be used to calculate certain production and import/export data that we have determined to be CBI. Therefore, although we had proposed a non-CBI status for the following data elements, we have determined in this final action that they qualify as CBI under the following conditions for the reasons stated above:

- The total combined supplier level CO_2e (40 CFR 98.3(c)(5)(i)) is confidential if the reporter produces, imports, exports or otherwise supplies just one product and if EPA has determined that the amount of that one product produced, imported, exported or otherwise supplied is CBI.
- The quantity of each GHG (40 CFR 98.3(c)(5)(ii) is confidential if the reporter produces, imports, exports or otherwise supplies just one product and if EPA has determined that the amount of that one product produced, imported, exported or otherwise supplied is CBI.

We disagree with commenters who recommended that facility-level and importer/exporter-level CO_2e data should be held confidential for facilities that supply two or more products. We do not believe, nor did we receive any information indicating, that where a facility supplies multiple products, competitors would be able to estimate with any degree of certainty the quantities of a specific product produced, imported, or exported using the facility-level or importer/exporter-level CO_2e data. Therefore, we concluded that our proposed non-CBI determination for suppliers who supply two or more products is appropriate and finalize that determination in this action (see Table 4 of this preamble for the final confidentiality determinations for the Greenhouse Gases Reported).

TABLE 4—FINAL CBI DETERMINATION FOR GREENHOUSE GASES REPORTED

Source category (Part 98 subpart)	Data elements	Are these data CBI?
General Provisions (Subpart A)	Total facility-level CO_2e from subparts LL–PP [a]	No. [b]
Suppliers of Coal-Based Liquid Fuels and Petroleum Products (subparts LL and MM): Producers.	Facility-level CO_2 from each subpart [c]	No. [b]
	Product-specific CO_2	Yes.
Suppliers of Coal-Based Liquids and Petroleum Products (subparts LL and MM): Exporters.	Exporter level CO_2 from each subpart [c]	No[b].
	Product-specific CO_2	Yes.
Suppliers of Natural Gas and NGLs (subpart NN): Local Distribution Companies (LDCs).	LDC-level CO_2 from subpart NN[c]; Product-specific CO_2	No.
Suppliers of Natural Gas and NGLs (subpart NN): Fractionators.	Facility-level CO_2 from subpart NN[c]	No[b].
	Product-specific CO_2	Yes.
Suppliers of Industrial GHGs (subpart OO): Producers	Facility-level GHG quantities, by gas, from subpart OO[c]; Product-specific GHG quantities.	Yes.
Suppliers of Industrial GHGs (subpart OO): Importers and Exporters.	Importer/exporter level GHG, by gas, from subpart OO[c]; Product-specific GHG quantities.	Yes.
Suppliers of CO_2 (subpart PP): Production Wells	Facility-level CO_2 for subpart PP[c]	No.
Suppliers of CO_2 (subpart PP): Industrial Production Facilities.	Facility-level CO_2 for subpart PP[c]	Yes.
Suppliers of CO_2 (subpart PP): Importers and Exporters	Importer/Exporter-level CO_2 for subpart PP[c]	Yes.

[a] This data element, reported under 40 CFR part 98, subpart A, represents the aggregation of CO_2e from all supplier source categories. For example, if a refinery supplies petrochemical products (40 CFR part 98, subpart MM) and is also a CO_2 supplier (40 CFR part 98, subpart PP) the facility-level CO_2e would represent the CO_2e for both activities combined.

[b] This data element is confidential if the reporter produces, imports, exports or otherwise supplies just one product and if EPA has determined that the amount of that one product produced, imported, exported or otherwise supplied is CBI.

[c] This data element, reported under 40 CFR part 98, subpart A, represents an aggregation of CO_2 (by source category) from multiple individual products the reporter supplies.

4. Production/Throughput Quantities and Composition Category

New Data Elements: EPA has added two new data elements to this data category:

- The total annual CO_2 mass through main flow meter(s) in metric tons (40 CFR 98.426(c)(2)(i)).
- The total annual CO_2 mass through subsequent flow meter(s) in metric tons (40 CFR 98.426(c)(2)(ii).

These new data elements were added by the amendments published on December 17, 2010 (75 FR 79092) and were not included in the July 2010 CBI proposals. These data elements, which require reporters subject to subpart PP to provide CO_2 throughput data for individual flow meters located at the plant, are the same type of data as other data elements already assigned to this data category (*e.g.,* the annual mass for each mass flow meter reported by facilities using Equation PP–1 (40 CFR 98.426(a)(1)). Consistent with the determination made for other meter-level CO_2 data in this category, EPA has determined that these two new data elements are eligible for confidential treatment when reported by industrial CO_2 production facilities, but not entitled to confidential treatment when reported by production wells. As discussed in Section II.C.3 of this preamble, although facility-level CO_2 supply data is generally available for CO_2 production wells, we have found no public sources of such data for industrial CO_2 production facilities. Furthermore, some commenters stated that CO_2 supply data for industrial production facilities would be likely to cause competitive harm if disclosed to the public because information documenting the amount of CO_2 collected and transferred off site would provide competitors with sensitive information that may be used to determine a reporter's market share and to gain insight into a reporter's ability to meet increases in market demand. Since the facility-level CO_2 data can be discerned from the meter-level CO_2 data reported for the two new data elements, we have concluded that these data elements are CBI when reported by industrial suppliers of CO_2 and non-CBI when reported by CO_2 production wells.

Comment: In the July 7, 2010 CBI proposal, EPA proposed that most data elements in the Production/Throughput and Composition Category would be entitled to confidential treatment, except for the following: (1) Facility-level and importer/exporter-level data for suppliers of CO_2, (2) data reported by natural gas LDCs, and (3) data reported by importers of petroleum products. Most commenters agreed with our proposed confidentiality determinations and with our rationale that facility-level data on the annual quantities and types of natural gas liquids, petroleum products, and industrial GHGs produced by facilities would cause competitive harm if disclosed to the public.

A number of commenters agreed with the determination that the data reported under subpart OO should be held confidential. One commenter stated that disclosure of subpart OO data reported by exporters would often disclose data on production facilities because some production facilities export all or nearly all of their products. Others agreed that product composition data reported under subpart OO is sensitive information that would harm the competitive position of U.S. companies. However, other commenters disagreed, stating that the composition of products reported under 40 CFR part 98, subpart OO should be disclosed because of the high global warming potentials of these products.

Some commenters believe that the mass of CO_2 transferred off site (reported under 40 CFR part 98, subpart PP) should be held confidential for industrial production facilities such as ammonia manufacturing plants and for CO_2 importers and exporters. As discussed in Section II.C.3 of this preamble for related data elements, commenters stated that data on the amount of CO_2 supplied is not already publicly available for industrial CO_2 production facilities and CO_2 importers and exporters and would likely cause competitive harm if disclosed to the public.

Several commenters disagreed with our proposed determinations for data on the quantities and types of natural gas liquids and petroleum products imported into the U.S. (reported under subparts LL and MM) and recommended that this data be held confidential. As discussed in Section II.C.3 of this preamble for related data elements, some commenters argued that the amount and type of product imported is not publicly available from EIA for importers that use a broker, because the broker reports the import data to EIA under the broker's name. They also stated that the Part 98 product definitions differed from those of EIA and that these differences could reveal information not available through EIA. They also noted that disclosure of the amount and quantity of imported material could cause competitive harm to importers because it would reveal the type and rate of consumption of raw materials at their production facilities which could be used to discern sensitive process information (*e.g.,* production efficiency).

Response: The final determinations for this data category are summarized in Table 5 of this preamble. Except as described below, we have finalized the confidentiality determinations as proposed in the July 2010 CBI proposals.

TABLE 5—FINAL CONFIDENTIALITY DETERMINATION FOR SUPPLIER PRODUCTION/THROUGHPUT QUANTITIES AND COMPOSITION DATA

Source category (Part 98 Subpart)	Data elements	Are these data CBI [a] (Y/N)?
Suppliers of Coal-Based Liquid Fuels and Petroleum Products (Subparts LL and MM): Producers.	Facility level, by product	Yes.
Suppliers of Coal-Based Liquids and Petroleum Products (Subparts LL and MM): Exporters.	Exporter level, by product	Yes.
Suppliers of Natural Gas and NGLs (Subpart NN): LDCs.	LDC level	No.
Suppliers of Natural Gas and NGLs (Subpart NN): Fractionators.	NGL Fractionator level	Yes.
Suppliers of industrial GHGs (Subpart OO): Producers.	Facility level, by fluorinated GHG	Yes.
	Facility level throughput [b] information, by process	Yes.
Suppliers of industrial GHGs (Subpart OO): Importers and exporters.	Importer and exporter level, by fluorinated GHG	Yes.
Suppliers of CO_2 (Subpart PP): Production wells	Facility-level total CO_2 production	No.
	CO_2 mass or volume measured by flow meter	No.

TABLE 5—FINAL CONFIDENTIALITY DETERMINATION FOR SUPPLIER PRODUCTION/THROUGHPUT QUANTITIES AND COMPOSITION DATA—Continued

Source category (Part 98 Subpart)	Data elements	Are these data CBI [a] (Y/N)?
	Facility level annually aggregated production information, by end use application.	No.
Suppliers of CO_2 (Subpart PP): Industrial production facilities.	Facility-level total CO_2 production	Yes.
	CO_2 mass or volume measured by flow meter	Yes.
	Facility level annually aggregated production information, by end use application.	Yes.
Suppliers of CO_2(PP): Importers and exporters	Importer and exporter level total CO_2 imported/exported	Yes.
	CO_2 mass or volume measured by flow meter, scales and weigh bills.	Yes.
	Importer and exporter level annually aggregated production information, by end use application.	Yes.

[a] Production/throughput data are reported by product.
[b] Throughput information includes the total mass of the reactants, by-products, and wastes permanently removed from each fluorinated GHG or nitrous oxide production process.

EPA has determined that the meter-level CO_2 data and the amount of CO_2 supplied to each of the 13 types of end-users (reported under 40 CFR 98.426(f)), is CBI for industrial suppliers of CO_2 and for CO_2 importers and exporters. As discussed in Section II.C.3 of this preamble, we previously proposed that these data elements would be non-CBI for all CO_2 producers because we had identified sources CO_2 supply data. However, we have since determined that although CO_2 supply data are generally available for CO_2 production wells, such data for industrial CO_2 production facilities and for CO_2 importers and exporters is not publicly available. We therefore agree with the commenter that these data are not already available to the public. The meter-level CO_2 data and the amount of CO_2 supplied to each of the 13 types of end-users can be used to calculate the facility-level CO_2 supply data for industrial sources. Information documenting the amount of CO_2 collected and transferred off site, including the data elements at issue, provides competitors with sensitive information that may be used to determine a facility's market share and to gain insight into a facility's ability to meet increases in market demand.

EPA is not making a final confidentiality determination for data elements that describe the amount and type of coal-based liquids and petroleum products reported by importers (subparts LL and MM). As discussed in Section II.C.3 of this preamble, EPA was not able to make a determination at this time that would apply to all importers of coal-based liquids and petroleum products because the determination would vary depending on importer-specific characteristics (*e.g.,* whether the report to EIA, what type(s) of products they import). For the detailed discussion of the rationale for this decision, see EPA's response in Section II.C.3 of this preamble related to Suppliers of Coal-Based Liquid Fuels and Suppliers of Petroleum Products (Subpart LL and Subpart MM).

5. Identification Information Category

Comment: Some commenters agreed with EPA's proposed determination that the data in this category do not qualify for confidential treatment. However, a few commenters disagreed with our proposal. Commenters were concerned that disclosure of certain data elements in this category, particularly the company name and address, would enable competitors to determine the quantity and type of materials imported/exported by a particular company. Another commenter stated that the competitive position of businesses would be harmed if the name and address of U.S. parent companies and their percentage of ownership interest is made publically available. These commenters argued that this information could be used together with other data to determine market share and other competitive information.

Response: We disagree with those commenters who believe the disclosure of the data in this category would likely cause competitive harm to suppliers. We are not aware of any situations, nor did the commenters provide any examples, in which the name, address, and U.S. parent company of an importer or exporter has been or could be linked with other available data to disclose sensitive business information. Further, reporters eligible to hold confidential the quantities and compositions of imported materials (such as those reporters importing fluorinated GHGs under 40 CFR part 98, subpart OO) may submit manifest confidentiality requests to the U.S. Customs and Border Protection (CBP) to protect as confidential its name and address on customs forms. Therefore, competitors would not be able to link customs data on the quantity and type of material imported with the name and address of the Part 98 reporter. For the reasons stated above, we conclude that our proposed non-CBI determination for this data category is appropriate.

6. Unit/Process Operating Characteristics Category

New Data Elements: EPA has added one new data element to this data category for suppliers subject to subpart PP. This data element requires production facilities to report the location of each flow meter in relation to the point of segregation (reported under 40 CFR 98.426(c)(2)(iv)). The data element was added by the amendments published on December 17, 2010 (75 FR 79092) and was not included in the July 2010 CBI proposals. This data element is exactly the same type of location information as required by other data elements already assigned to this data category (*e.g.,* the location of each volumetric flow meter in the process chain in relation to the points of CO_2 stream capture, dehydration, compression, and other processing reported under 40 CFR 98.426(b)(7)). In the CBI proposal, we explained that disclosure of such location information is not likely to cause competitive harm to the reporting facilities because it does not provide descriptions or diagrams on the design or operation of a facility's production process or reveal any other potentially sensitive information about any facility. Therefore, we have determined in this final action that the data elements in the Unit/Process Operating Characteristics category relative to location information,

including this new data element, are not CBI.

Comment: For this data category, EPA proposed that only one data element (the estimated percent transformation efficiency reported under 40 CFR part 98, subpart OO for fluorinated production process) would be eligible for confidential treatment. Many commenters agreed that most data in this category do not qualify for confidential treatment. Several commenters also supported EPA's proposed determination that the estimated percent transformation efficiency of each production process for the fluorinated GHG produced under 40 CFR part 98, subpart OO is CBI.

Other commenters disagreed with our proposal and recommended that all unit/process operating characteristics should be considered CBI. Most of these commenters provided broad statements that operating data provides competitors with sensitive business information, but did not identify which specific data elements or explain how their disclosure would cause competitive harm to reporters. However, a few commenters provided more detailed rationales regarding specific data elements. One commenter believes the subpart OO data element concerning the date on which a change to a fluorinated GHG product occurs should be kept confidential because the dates would indicate to competitors that the reporter was making changes to their product. Another commenter believes the dates on which fluorinated GHGs are imported and/or exported and the port of entry and port of export should be entitled to confidential treatment because this information could be used in conjunction with customs records to identify the amount of material imported/exported by the reporter. This commenter added that to protect confidential and competitively sensitive information, importers and exporters can submit manifest confidentiality requests to U.S. CBP. According to the commenter, CBP allows importers and exporters to claim their names and addresses as confidential but not information on the material imported/exported, the port, or the date. This commenter argued that disclosure of such import/export data would place businesses required to report under Part 98 at a significant competitive risk and argued that information on the date and port of import/export could be used by competitors (both domestic and international) to discern import and export practices, and potentially shipment data.

One commenter stated that certain information submitted as part of BAMM extension requests was sensitive information requiring confidential treatment. This commenter specifically identified the following data elements from BAMM extension requests as confidential: The reason for the extension request (40 CFR 98.3(d)(2)(ii)(C)) and the planned installation date of monitoring equipment (40 CFR 98.3(d)(2)(ii)(F)). This commenter stated that this information is not available from other public sources and, if disclosed, would cause competitive harm by enabling competitors to determine a company's ability to capitalize on specific market opportunities and allowing competitors to target markets based on weaknesses and vulnerabilities. They further noted that information on future shutdowns would allow competitors to increase production during a reporter's shutdown and would likely cause serious harm to the reporter's competitive position.

Response: Except as described below, we have finalized the proposed confidentiality determinations for the data elements in this category. In response to comments received, we have determined that the following data elements in this data category are CBI:

- Dates of import/export (40 CFR part 98, subpart OO).
- Ports of import/export (40 CFR part 98, subpart OO).
- The reason for submitting a BAMM extension request (40 CFR part 98, subpart A).
- The reason why equipment was not or could not be obtained or installed during a planned shutdown between October 30, 2009 and April 1, 2010 (as reported in a BAMM extension request (40 CFR part 98, subpart A).
- Planned installation date for monitoring equipment as reported in a BAMM extension request (40 CFR 98.3(d)(2)(ii)(F))).
- Anticipated date on which facility will begin using the full monitoring methods in the rule (40 CFR 98.3(d)(2)(ii)(F)).

At the time of the July 10 CBI proposals, we were not aware of any potential competitive harm that would likely result from the disclosure of the dates on which fluorinated GHGs are imported and/or exported and the port of entry and export (reported under 40 CFR part 98, subpart OO). Since then, we have learned that release of these data elements to the public could allow competitors to link customs records on quantities and product composition with the import and export data reported under Part 98, thus allowing competitors to determine market share and devise marketing strategies to undermine or weaken a competitor's position. Because disclosure of these data elements is likely to cause the substantial harm described above to suppliers reporting these data under Part 98, we have determined in this final action that these data elements qualify as CBI.

EPA agrees with commenters who recommended that certain data elements submitted as part of BAMM extension requests are eligible for confidential treatment. At the time of proposal, we believed the reason for requesting a BAMM extension (reported under 40 CFR 98.3(d)(2)(ii)(C)) and the reason why equipment was not (or could not be) installed (reported under 40 CFR 98.3(d)(2)(ii)(E)) would be generic information that would not reveal any sensitive operating information. However, since proposal EPA has reviewed a number of BAMM extension requests and determined that they contain more detailed information, such as process diagrams and operational information, than we had previously anticipated. We also note that many facilities have claimed these data as CBI because they provide insight into facility-specific operating conditions or process design that are not available from other sources and would harm their competitive position if released.

We also agree with those commenters that stated that the planned installation date and the date of anticipated startup (reported under 40 CFR 98.3(d)(2)(ii)(F)) provides competitive information regarding future process shutdowns. Based on new information received in comments, we have concluded that these data elements could provide information about the operation of a facility that can be used by competitors to anticipate and potentially benefit from future decreases in product supply. For example, a competitor could increase its own market share by increasing production or increase its profits by increasing prices during these periods. Based on this new information, EPA has determined that these data elements qualify as CBI.

Although some commenters claimed that the data element concerning the date on which a change to a fluorinated GHG product occurs (40 CFR 98.416(f)) should be confidential, they did not provide rationale or supporting information that enable us to assess their claim. Because we are not aware of any situations under which public disclosure of this data element is likely to cause substantial harm to suppliers reporting these data elements, our position regarding this data element remains unchanged in this final action.

7. Calculation, Test, and Calibration Methods Category

Comment: We received several comments agreeing with EPA that disclosing the calculation, test, and calibration methods would be unlikely to reveal proprietary business information. No commenters disagreed with our proposed determination that the data elements in this category are not CBI.

Response: We appreciate the commenters' support of our proposed non-CBI determination for this data category. In light of these comments, we conclude that our proposed non-CBI determination for this data category (as described in 75 FR 39126, July 7, 2010) is appropriate and finalize that determination in this action.

8. Data Elements for Periods of Missing Data That Are Not Related to Production/Throughput

Comment: We received comments supporting EPA's proposed determination that the data in this data category are not CBI. No commenters opposed our proposed determination that the data in this category are not CBI.

Response: We appreciate the commenters' support of our proposed determination for this data category. In light of these comments, we conclude that our proposed non-CBI determination for this data category (as described in 75 FR 39128, July 7, 2010) is appropriate and finalize that determination in this action.

9. Emission Factor Category

Comment: Several commenters agreed with EPA's proposed determination that the data in this data category qualify for confidential treatment. These commenters agreed with EPA's proposed determination that disclosure of this data would substantially harm the competitive position of suppliers and therefore it should be kept confidential. Other commenters disagreed with EPA's proposed CBI determination, arguing that most of the Part 98 supplier data should be considered non-CBI. However, these commenters did not provide any specific rationale or information explaining why any data element in this data category should be considered non-CBI, but instead provided only general statements that making data available to the public was consistent with the CAA and that it was the purpose of the GHGRP to make GHG emissions data available to the public.

Response: Although some commenters disagreed with EPA's proposed determination that the data elements in this data category qualify for confidential treatment, they did not provide any rationale or information for us to evaluate whether the proposed CBI determination may not be appropriate for any data elements in this data category. Specifically, the commenters did not provide any information to support why data in this particular category would meet the definition of emission data. Neither did the commenter explain why any data element in this category does not qualify as CBI. For instance, the commenter did not claim that any data element in this category is already publicly available or disagree with EPA's assessment that disclosure of these data elements would likely cause competitive harm. Further, the commenters who supported our proposed determination explained that the information is held confidential by companies and that disclosure would cause substantial harm to the competitive position. The commenters who supported our proposed determination agreed with EPA's rationale described in Section II.D.8 of the July 7, 2010 CBI proposal that emission factors can be used to back-calculate the carbon share of the supplier's products and raw materials. In light of the above, we conclude that our proposed determination for this data category is appropriate and finalize the determination in this action.

10. Amount and Composition of Materials Received Category

New Data Elements:

EPA has added the following six new data elements to this data category:

- EIA crude stream code (40 CFR 98.396(a)(20)(v)).
- Crude stream name (40 CFR 98.396(a)(20)(v)).
- Generic name for crude stream (40 CFR 98.396(a)(20)(vi)).
- EIA two-letter country or state production area code for batch (40 CFR 98.396(a)(20)(vi)).
- Volume of crude oil in barrels injected into a crude oil supply or reservoir (40 CFR 98.396(a)(22)).
- Indication of whether the material is a blended non-crude feedstock or blended product (40 CFR 98.396(d)(1)(iii)).

The data elements were added by the amendments published on October 28, 2010 (75 FR 66434) and were not included in the July 2010 CBI proposals. The data elements require the reporting of information about the composition and type of raw materials used by facilities that produce products listed in subpart MM. They are the same type of data as other data elements already included in this data category in the CBI proposals. For example, 40 CFR 98.396(a)(20)(vi) is the same type of data as 40 CFR 98.396(a)(20)(iv), which requires the country of origin the crude oil batch to be reported, and 40 CFR 98.396(a)(22) is the same type of data as 40 CFR 98.406(a)(2), which requires the quantity of ethane product received by natural gas fractionators. In the July 2010 CBI proposals, we explained that disclosure of the data elements in this category would likely cause substantial competitive harm to the reporting facilities. For example, we explained how information about a reporter's raw material source could be used to discern design or operating limitations (*e.g.,* show that a facility only processes certain types of crude oil) or could be used to develop competitive strategies to increase the cost of certain types of raw materials. In other cases, the amount of raw material consumed can be used in combination with production data to infer the operating efficiency (*e.g.,* amount of product produced per unit of raw material consumed), which would allow competitors to infer production costs and pricing structures (see 75 FR 39127, July 7, 2010). Because the CBI proposal included data elements that are the same in type and characteristic as the six new data elements, we conclude that the proposal adequately addresses these six data elements and that a separate CBI proposal for these data elements is not necessary. For the reasons set forth in this section and in Section II.C.9 of the July 7, 2010 CBI proposal, we have determined in this final action that the data elements in this data category qualify as CBI. This determination applies to all the data elements in this category, including the six new data elements listed above.

Comment: Most commenters agreed with EPA's proposed determination that the amount and composition of materials received by suppliers qualify for confidential treatment. These commenters agreed that, if released, the amount and composition of materials received by suppliers would likely cause substantial harm to the competitive positions of businesses reporting these data because it would reveal sensitive information about the manufacturing process or the composition of the product. Although most commenters supported EPA's proposed CBI determination for this category, some commenters disagreed. These commenters argued that all or most Part 98 data elements should be made available to the public. These commenters did not provide any

information explaining why any specific data element in this data category should be considered emission or otherwise non-CBI, but instead submitted general statements that disclosure of these data would be consistent with the CAA and the GHGRP.

Response: Although some commenters disagreed with EPA's proposed determination that the data elements in this data category qualify for confidential treatment, they did not provide any rationale or information for us to evaluate whether the proposed CBI determination may not be appropriate for any data elements in this data category. Specifically, the commenters did not provide any information to support why data in this particular category would meet the definition of emission data. Neither did the commenter explain why any data element in this category does not qualify as CBI. For instance, the commenters did not claim that any data element in this category is already publicly available, nor did they disagree with EPA's assessment that disclosure of these data elements would likely cause competitive harm. The commenters who supported our proposed determination agreed with EPA's rationale described in Section II.D.9 of the July 2010 CBI proposal that disclosure of data elements in this category is likely to cause substantial harm to reporters. In light of the above, we conclude that our proposed determination for this data category is appropriate and are finalizing the determination in this action.

11. Data Elements for Periods of Missing Data That Are Related to Production/Throughput

Comment: Several commenters agreed with EPA's proposed determination that the data in this data category qualify for confidential treatment. These commenters expressed agreement with EPA's proposed determination that disclosure of this data would substantially harm the competitive position of suppliers and therefore should be kept confidential.

Although most commenters supported EPA's proposed CBI determination for this category, some commenters disagreed. These commenters argued that all or most Part 98 data elements should be made available to the public. These commenters did not provide any rationale explaining why any specific data element in this data category should be considered emission data or otherwise non-CBI, but instead submitted general statements that disclosure of these data would be consistent with the CAA and the GHGRP.

Response: Although some commenters disagreed with EPA's proposed determination that the data elements in this data category qualify for confidential treatment, they did not provide any rationale or information for us to evaluate whether our proposed determination is not appropriate for any data elements in this data category. Specifically, the commenters did not provide any information to support why data in this particular category would meet the definition of emission data. Neither did the commenter explain why any data element in this category does not qualify as CBI. For instance, the commenters did not claim that any data element in this category is already publicly available, nor did they disagree with EPA's assessment that disclosure of these data elements would likely cause competitive harm. Further, the commenters who supported our proposed determination agreed with EPA's rationale described in Section II.D.10 of the July 2010 CBI proposal that the data elements in this category are themselves production data and materials received data for the missing data period and their disclosure could divulge sensitive details about operational capabilities, marketing strategies, market share, and product chemistries. We therefore conclude that our proposed determination for this data category is appropriate and finalize the determination in this action.

12. Supplier Customer and Vendor Information Category

Comment: Several commenters agreed with EPA's proposed determination that the data elements in this category qualify for confidential treatment. Some stated that the data was not publicly available and that they take steps to ensure the information is maintained as confidential. Several agreed with EPA's proposed determination that disclosure of these data elements would substantially harm the competitive position of suppliers. One stated that customers and vendors often require such data to be kept confidential and that in some cases this requirement is included in legal contracts, such as agreements for purchase or supply. Others stated that the identity of a vendor is proprietary information since it would allow competitors to determine customer base and identify large customers.

Although most commenters supported EPA's proposed CBI determination for this category, some commenters disagreed. These commenters argued that all or most of the Part 98 data should be considered non-CBI. These commenters did not provide any specific rationale regarding the data elements in this category, but instead submitted general statements that disclosure of these data would be consistent with the CAA and the GHGRP.

Response: Although a few commenters disagree with EPA's proposed determination that the data elements in this category are eligible for confidential treatment, they did not provide any rationale or information for us to evaluate why any data element in this category should be considered non-CBI. Specifically, they did not provide any information to support why data in this particular category would meet the definition of emission data. The commenters did not claim that any data element in this category is already publicly available, nor did they disagree with EPA's assessment that disclosure of these data elements would likely cause competitive harm. Furthermore, commenters who supported our proposed determination explained that the information is held confidential by companies and that disclosure would cause substantial harm to the competitive position of their company by revealing information about customer base and in some cases the identity of individual customers, which would enable competitors to develop marketing strategies designed to steal these customers. We therefore conclude that our proposed determination for this data category is appropriate and finalize the determination in this action.

13. Process-Specific and Vendor Data Submitted in BAMM Extension Requests Category

Comment: Only a few commenters submitted comments on this data category. The majority of those providing comments agreed with EPA's proposed determination that disclosure of the data in this category would substantially harm the competitive position of reporters and that the data in this category therefore qualify for confidential treatment under 40 CFR 2.208. Some of these commenters also confirmed that they take measures to keep the data secret and that the information is not available from other sources.

Although some commenters supported EPA's proposed CBI determination for this category, other commenters disagreed. These commenters argued that all or most of the Part 98 data should be considered non-CBI. These commenters did not provide any specific rationale regarding the data elements in this category, but

instead submitted general statements that disclosure of these data would be consistent with the CAA and the GHGRP.

Response: While some commenters disagreed with EPA's proposed determination that this data is eligible for confidential treatment, they did not provide specific rationale or information for us to evaluate whether our proposed determination may not be appropriate for any data element in this category. Specifically, they did not provide any information to support why data in this particular category would meet the definition of emission data. Neither did the commenter explain why any data element in this category does not qualify as CBI. For instance, they did not claim that any data element in this category is already publicly available, nor did they disagree with EPA's assessment that disclosure of these data elements would likely cause competitive harm. Furthermore, the commenters who supported our proposed determination explained that the information is held confidential by companies and confirmed that disclosure of the data elements in this category could divulge sensitive information about specific processes that would likely cause substantial harm to reporters. We therefore conclude that our proposed determination for this data category is appropriate and finalize the determination in this action.

D. Amendment to 40 CFR Part 2 Addressing Treatment of Part 98 Data Elements

The July 7, 2010 CBI proposal included proposed amendments to 40 CFR 2.301 (*Special rules governing certain information obtained under the Clean Air Act*) that would establish procedures for EPA's handling of data collected under 40 CFR part 98 in accordance with EPA's final confidentiality determinations for the data. In this action, EPA finalizes the proposed amendment without change.

The final amendment authorizes EPA to release Part 98 data elements determined to be "emission data" or not otherwise entitled to confidential treatment without further procedural requirements. The final amendment also sets forth procedures for the treatment of information in Part 98 determined to be CBI. These procedures are similar to and consistent with the existing 40 CFR part 2 procedures for handling information determined to be CBI.

1. Summary of Comments and Responses on the Amendments to 40 CFR Part 2

Comment: One commenter recommended EPA revise 40 CFR 2.301(d) to include provisions either establishing a time limit on the duration of CBI determination or establishing a process by which data elements designated as CBI could be reclassified. Another commenter argued that if the Office of General Counsel makes a determination that information is no longer CBI, companies should be afforded the same opportunity to comment as provided under 40 CFR 2.204(e) and the opportunity for judicial challenge of the Agency's final determination, as provided under 40 CFR 2.205(f).

Response: As discussed in Section II.A.8 of this preamble (Time Limits on Confidentiality Determinations), the commenters did not provide supporting information explaining how data determined to be CBI in this action will become less sensitive over any specific period of time such that EPA should limit its CBI determination for such data to that time period. We note that other CBI determinations made by EPA are generally not time limited. Further, the final amendment to 40 CFR 2.301 provides procedures for EPA to modify a prior confidentiality determination (see 40 CFR 2.301(d)(4)) should certain Part 98 data be no longer entitled to confidential treatment because of a change in the applicable law or newly discovered or changed facts. This provision reflects the requirements in CBI regulations at 40 CFR 2.205(h) for modifying prior determinations for other information. For the reasons stated above, we do not believe that a time limit on the duration of CBI determinations made in this action is justified or necessary.

Further, consistent with 40 CFR 2.204(e), we provided reporters notice and an opportunity to comment by making confidentiality determinations for Part 98 data through notice and comment rulemaking. In this action stakeholders were given the opportunity to submit CBI claims and supporting documentation during the 60-day comment period for the proposed CBI determinations. We received no specific comment or information, nor do we have any reason to believe, that reporting facilities would have had any new or different information to substantiate their claims at the time they submit the data elements as opposed to that available during the public comment period for the CBI proposals. Further, during the comment period, the reporting facilities were able to consider the Agency's proposed confidentiality determinations in preparing their CBI claims and supporting documentations; businesses do not generally have such insight into EPA's positions when substantiating CBI claims under the existing CBI regulations. Lastly, as provided in the Judicial Review section of this notice, this final action is subject to judicial review under CAA section 307(b).

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the amendments to 40 CFR part 2 are a "significant regulatory action" because they raise novel legal or policy issues. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011) and any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

The amendments to 40 CFR part 2 do not impose any new information collection burden. The amendments are administrative in nature and do not increase the recordkeeping and reporting burden associated with Part 98. However, the OMB has previously approved the information collection requirements contained in the Part 98 regulations promulgated on October 30, 2009 under the provisions of the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0629. EPA has also submitted the Information Collection Request requirements for four additional Part 98 subparts promulgated on July 12, 2010 to OMB for approval (*see* 75 FR 39756). The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act (RFA)

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses,

small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of the amendments on small entities, small entity is defined as: (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; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. This definition of small entity is consistent with the definition of small entity used for Part 98.

After considering the economic impacts of today's amendments to 40 CFR part 2 on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The small entities directly regulated by Part 98 and affected by the amendments to 40 CFR part 2 include small businesses across all sectors of the economy encompassed by Part 98, small governmental jurisdictions, and small non-profits. An analysis of impacts on small entities was conducted at promulgation of Part 98 and the results are presented in the Section VIII.C of the preamble to the final Part 98 (74 FR 56369, October 30, 2009). Subsequent small entity analyses for additional Part 98 subparts were conducted and the results presented in: Section IV.D of the preamble to "Mandatory Reporting of Greenhouse Gases From Magnesium Production, Underground Coal Mines, Industrial Wastewater Treatment, and Industrial Waste (75 FR 39736, July 12, 2010); Section IV.D of the preamble to "Mandatory Reporting of Greenhouse Gases: Additional Sources of Fluorinated GHGs" (75 FR 74744, December 1, 2010); Section III.D of the preamble to "Mandatory Reporting of Greenhouse Gases: Injection and Geologic Sequestration of Carbon Dioxide" (75 FR 75060, December 1, 2010); Section III.D of the preamble to "Mandatory Reporting of Greenhouse Gases: Petroleum and Natural Gas Systems" (75 FR 74458, November 30, 2010). These analyses showed that the cost-to-sales ratio, comparing the compliance costs for affected industry sectors with industry-specific data on revenues for small businesses, are less than one percent for establishments owned by small businesses that EPA considers most likely to be covered by the reporting program. For small governments, EPA compared the average costs of compliance for combustion, local distribution companies, and landfills to average revenues and found that the costs of compliance with the reporting rule constitute less than one percent of average revenues for the smallest category of governments (*i.e.,* those with fewer than 10,000 people). We concluded from these analyses that Part 98 did not have a significant impact on a substantial number of small entities. This rule will not impose any new requirement on small entities that are not currently required by Part 98. The amendments to 40 CFR part 2 are administrative in nature and do not increase the costs for small entities to comply with Part 98. Therefore, this rule does not have a significant economic impact on a substantial number of small entities.

Although this final rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has taken several steps to reduce the impact of Part 98 on small entities. When we developed Part 98, we set applicability thresholds that reduced the number of small businesses required to report. We also did not require facilities to install CEMS if they did not already have them, and developed tiered methods that are simpler and less burdensome for some source categories. We also considered public comments submitted by small businesses and organizations that include small business members. After promulgation of Part 98, we provided a range of compliance tools, online training webinars, and other compliance assistance of use to small businesses. EPA continues to conduct significant outreach on the mandatory GHG reporting rule and maintains an "open door" policy for stakeholders to help inform EPA's understanding of key issues for industries and others.

D. Unfunded Mandates Reform Act (UMRA)

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538, requires Federal agencies, unless otherwise prohibited by law, to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Federal agencies must also develop a plan to provide notice to small governments that might be significantly or uniquely affected by any regulatory requirements. The plan must enable officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates and must inform, educate, and advise small governments on compliance with the regulatory requirements.

The amendments to 40 CFR part 2 do not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, or Tribal governments, in the aggregate, or the private sector in any one year. The amendments are administrative in nature and do not increase the costs of compliance for facilities to comply with Part 98. Thus, the amendments to 40 CFR part 2 are not subject to the requirements of sections 202 or 205 of the UMRA.

In developing Part 98, EPA consulted with small governments pursuant to a plan established under section 203 of UMRA to address impacts of regulatory requirements in the rule that might significantly or uniquely affect small governments. For a summary of EPA's consultations with State and/or local officials or other representatives of State and/or local governments in developing Part 98, *see* Section VIII of the preamble to the final Part 98 (74 FR 56370).

E. Executive Order 131132: Federalism

The amendments to 40 CFR part 2 do not have federalism implications. They 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. However, for a more detailed discussion about how Part 98 relates to existing State programs, please see Section II of the preamble to the final Part 98 rule (74 FR 56266).

The amendments to 40 CFR part 2 are administrative in nature and apply to data reported under Part 98 by facilities that directly emit GHGs or supply fuel or chemicals that may emit GHGs when used. Part 98 does not apply to governmental entities unless the government entity owns a facility that directly emit GHGs above threshold levels such as large stationary combustion sources or landfills, so relatively few government facilities would be affected. The amendments to 40 CFR part 2 also do not limit the power of States or local governments to collect GHG data or regulate GHG emissions. Thus, Executive Order 13132 does not apply to this action.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicited comments on the proposed action from State and local officials. For a discussion of how Part 98 relates to existing State programs and a

summary of EPA's consultations with State and local government representatives during the development of Part 98, *see* Sections II and VIII of the preamble for the final Part 98 (74 FR 56260, October 30, 2009), respectively. In addition, after the July 7, 2010 CBI proposal, EPA held meetings with associations including State and local agencies, and considered public comments submitted by such agencies in developing the final confidentiality determinations and 40 CFR part 2 amendments.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action is not expected to have Tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000), because this action is administrative in nature and does not impose any new requirements on Tribes. Thus, Executive Order 13175 does not apply to this action. However, EPA consulted with Tribal officials in developing Part 98. For a summary of EPA's consultations with Tribal governments and representatives in developing Part 98, *see* Section VIII.F of the preamble to the final Part 98 (74 FR 56371, October 30, 2009).

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not a "significant energy action" as defined in Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The amendments to 40 CFR part 2 are administrative in nature and therefore do not have any adverse impacts on energy supply, distribution, or use.

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 in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

The amendments do not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this 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. The amendments to 40 CFR part 2 are administrative in nature and therefore do not affect the level of protection provided to human health or the environment.

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 (SBREFA), generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the U.S. prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective July 25, 2011.

List of Subjects in 40 CFR Part 2

Environmental protection, Administrative practice and procedure, Reporting and recordkeeping requirements.

Dated: May 19, 2011.

Lisa P. Jackson,

Administrator.

For the reasons stated in the preamble, title 40, chapter I, of the Code of Federal Regulations is amended as follows:

PART 2—[AMENDED]

■ 1. The authority citation for part 2 continues to read as follows:

Authority: 5 U.S.C. 301, 552 (as amended), 553; secs. 114, 301 and 307, Clean Air Act (as amended) (42 U.S.C. 7414, 7601, 7607).

Subpart B—[Amended]

■ 2. Section 2.301 is amended by revising paragraph (c) and adding paragraph (d) to read as follows:

§ 2.301 Special rules governing certain information obtained under the Clean Air Act

* * * * *

(c) *Basic rules that apply without change.* Except as otherwise provided in paragraph (d) of this section, §§ 2.201 through 2.207, § 2.209, and §§ 2.211 through 2.215 apply without change to information to which this section applies.

(d) *Data submitted under 40 CFR part 98.* (1) Sections 2.201 through 2.215 do not apply to data submitted under 40 CFR part 98 that EPA has determined, pursuant to section 114(c) of the Clean Air Act and 5 U.S.C. 553(c), to be either of the following:

(i) Emission data.

(ii) Data not otherwise entitled to confidential treatment pursuant to section 114(c) of the Clean Air Act.

(2) Except as otherwise provided in paragraphs (d)(2) and (d)(4) of this section, §§ 2.201 through 2.215 do not apply to data submitted under 40 CFR part 98 data that EPA has determined, pursuant to section 114(c) of the Clean Air Act and 5 U.S.C. 553(c), to be entitled to confidential treatment. EPA shall treat that information as confidential in accordance with the provisions of § 2.211, subject to paragraph (d)(4) of this section and § 2.209.

(3) Upon receiving a request under 5 U.S.C. 552 for data submitted under 40 CFR part 98 that EPA has determined, pursuant to section 114(c) of the Clean Air Act and 5 U.S.C. 553(c), to be entitled to confidential treatment, the EPA office shall furnish the requestor a notice that the information has been determined to be entitled to confidential treatment and that the request is therefore denied. The notice shall include or cite to the appropriate EPA determination.

(4) Modification of prior confidentiality determination. A determination made pursuant to section 114(c) of the Clean Air Act and 5 U.S.C. 553(c) that information submitted under 40 CFR part 98 is entitled to confidential treatment shall continue in effect unless, subsequent to the confidentiality determination, EPA takes one of the following actions:

(i) EPA determines, pursuant to section 114(c) of the Clean Air Act and 5 U.S.C. 553(c), that the information is emission data or data not otherwise entitled to confidential treatment under section 114(c) of the Clean Air Act.

(ii) The Office of General Counsel issues a final determination, based on the criteria in § 2.208, stating that the information is no longer entitled to confidential treatment because of change in the applicable law or newly-discovered or changed facts. Prior to making such final determination, EPA shall afford the business an opportunity to submit comments on pertinent issues in the manner described by §§ 2.204(e) and 2.205(b). If, after consideration of any timely comments submitted by the business, the Office of General Counsel makes a revised final determination that the information is not entitled to confidential treatment under section 114(c) of the Clean Air Act, EPA will notify the business in accordance with the procedures described in § 2.205(f)(2).

* * * * *

[FR Doc. 2011–12930 Filed 5–25–11; 8:45 am]

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H.R. 1308/P.L. 112–13
To amend the Ronald Reagan Centennial Commission Act to extend the termination date for the Commission, and for other purposes. (May 12, 2011; 125 Stat. 215)
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